CLERK'S COPY.

TRANSCRIPT OF RECORD

Pet. 166 8579 U.S.S.C.

Supreme Court of the United States

OCTOBER TERM, 1937

No. 715

JAMES M. WRIGHT, PETITIONER,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

No. 716

JAMES M. WRIGHT, PETITIONER,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 19, 1938.

CERTIORARI GRANTED FEBRUARY 28, 1938.

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1 IN THE DISTRICT COURT OF THE UNITED STATES, Placita.

Northern District of Indiana,

Fort Wayne Division.

TRANSCRIPT ON SECOND APPEAL TO CIRCUIT COURT OF APPEALS.

Pleas And Proceedings had before the Honorable Thomas W. Slick, Judge of the District Court of the United States, for the Northern District of Indiana, at a term of said court, begun and held at the United States Court House in the City of Fort Wayne, Indiana, to-wit:

In the matter of
James M. Wright,
Debtor. } No. 2073 In Bankruptcy.

Be it remembered that heretofore, to wit: on the 23rd day of December, 1936, the above named debtor by his attorneys, Cook & Bailey, filed in the office of the Clerk of this court, his Application to Amend Schedules A-2 and B-1, which Application to Amend Schedules reads in the words and figures following, to-wit:

Dec. 23, 36. 2 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Indiana,

Fort Wayne Division.

In the Matter of
The Bankruptcy of James M. Wright. } No. 2073.

APPLICATION TO AMEND SCHEDULES.

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, Debtor in said Cause and asks the Court to grant him leave to amend his schedules A-2 and B-1 and respectfully represents to the Court:

That prior to the filing of his petition in bankruptcy he was the owner of and had conveyed part of his real estate covered by the mortgage of The Union Central Life Insurance Company to his son-in-law John E. Coon being the northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana and the Southeast quarter of said quarter to his daughter Edna E. Coon; that he conveyed the southeast quarter of the southwest quarter of Section 31, said Township, County and State to his wife Emma G. Wright, and that he conveyed to his son, Walter C. Wright the north one-half of the northwest quarter of Section 4, Township 23 north of range 13 east, in said County and State. That each of said conveyances was without any money consideration. That all of his land made one farm and he continued to reside on said farm with said children and assisted in farming the same and received part of the rents and profits thereof. That on October 29, 1934, he filed his petition and schedules herein and set out all of said real estate and showed it was incumbered by said mortgage to said Life Insurance Company. That by virtue of his
3 liability on said mortgages he was interested in said real estate and had the right to redeem from the sale thereof on said mortgages.

That afterwards on April 13, 1935, said children conveyed all of said real estate back to him and he is still the owner thereof and was the owner of said real estate on October 11,

1935 when he filed his amended petition under Subsection (s) of the Act of August 28, 1935.

That a clerk in the office of the Conciliation Commissioner of Jay County, Indiana, made out his original petition and said Commissioner did not advise him to set out said facts as to his rights in said real estate and said matter was not explained in said schedules.

That by virtue of said original petition and schedules and said re-conveyances and his amended petition herein said real estate became assets in his estate in bankruptcy for the benefit of his creditors named in said schedules.

Wherefore he asks the Court to grant him leave and to allow him to amend said schedules to show the above facts and he files herewith said amended schedules.

4 James M. Wright.

Subscribed and sworn to before me this 21st day of December 1936.

My Commission expires May 29, 1938.

(Seal Homer E. Bailey,
Notary Public.

(Endorsed) Filed Dec. 23, 1936. Margaret Long, Clerk.

5 And now, on the same date, to-wit: December 23, 1936, the Debtor tenders his amended Schedules A-2 and B-1, which amended Schedules read in the words and figures following, to-wit:

Dec. 23, 36. 6

Amended Schedule A-2.

Creditors Holding Securities.

Reference to Ledger or Voucher.	Names of Creditors.	Residences (If unknown, that fact must be stated).	Description of securities.	When & where debts were contracted.	Value of securities.	Amount of debts.
				Portland, Ind. Oct. 1, 1925.		
	The Union Central Life Insurance Company.	Cincinnati, Ohio.	Tract 1—W½ S. E. Sec. 31, Twp. 24 N. R. 13 E. Jay Co. Ind. 80 Acres.			
			Tract 2—E½ S. E. Sec. 31, Twp. 24 N. R. 13 E. said Co. and State. 80 acres.			
			Tract 3—S. E. S. W. Sec. 31, Twp. 24 N. R. 13 E, said County and State, 40 acres.		$9000.00	and interest.
			Tract 4—N½ N. W. Sec. 4, Twp. 23 N. R. 13 E. said County and State. 80.31 acres.		$3000.00	and interest.

Explanation:—

That the debtor executed the mortgages to said Company covering all of said real estate. That when he filed said petition in Bankruptcy he owned said Tract 1. That prior to said petition he conveyed the north half of said tract 2 to his son-in-law, John E. Coon and the south half to his daughter, Edna E. Coon. That he conveyed tract 3 to his wife, Emma G. Wright. That he conveyed tract 4 to his son, Walter C. Wright. That each of said conveyances was without any money consideration. That all of said tracts were one farm and he remained in possession of said land, assisted in farming the same and received part of the rents and profits thereof. That by virtue of his liability on said mortgages the debtor was interested in said real estate and had the right to redeem from any sale of said land on said mortgages. That said children conveyed all of said land back to him

on April 13, 1935. That when he filed his amended petition under Subsection (s) of the Bankruptcy Act of August 28, 1935, his title had been completed and he was the owner in fee-simple of all of said real estate and is still the owner thereof. That by virtue of said first petition and said amended petition said land is a part of the assets of his estate in Bankruptcy named in said schedules.

Total, $12,000.00 and interest.

James M. Wright,
Petitioner.

7

Schedule A-2.

Accommodation Paper.

[N. B.—The dates of the notes or bills and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker or acceptors or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to Ledger or Voucher.	Names of holders.	Residences. (If unknown, that fact must be stated.)	Names and residences of persons accommodated.	Places where contracted.	Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount.
					Total,	

.....

Petitioner.

Oath to Amended Schedule A-2.

United States of America,
Northern District of Indiana. } ss.

On this 21st day of December, A. D. 1936, before me personally came James M. Wright the person mentioned in and who subscribed to the foregoing Schedule A [2], and who be-

ing by me first duly sworn did declare the said Schedule to be a true statement of all his secured debts to The Union Central Life Insurance Company.

James M. Wright.

Subscribed and sworn to before me this 21st day of December, 1936.

My Commission expires May 29, 1938.

Homer E. Bailey,
Notary Public.
(Official Character)

(Seal)

8 Schedule B.—Statement of All Property of Bankrupt.
Amended Schedule B-1.

Real Estate.

Location and Description of all real estate owned by Debtor, or held by him.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated Value.
Tract 1—W½ S. E. Sec. 31, Twp. 24 N. R. 13 E. Jay Co. Ind. 80 acres. Tract 2—E½ S. E. Sec. 31 Twp. 24 N. R. 13 E. said Co. and State. 80 acres. Tract 3—S. E. S. W. Sec. 31 Twp. 24 N. R. 13 E, said County and State. 40 acres. Tract 4—N½ N. W. Sec. 4, Twp. 23 N. R. 13 E. said County and State. 80.31 acres.	Two mortgages to The Union Central Life Insurance Company, executed Oct. 1, 1925, in the principal sums of $9,000.00 and $3,000.00 with interest thereon.		$ Cts. $10,845.00

Note explanation on Amended Schedule A-2.
(Above)

Total, $10,845.00

James M. Wright,
Petitioner.

This schedule must be executed in triplicate.

9 Schedule B-6.

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reasons for their custody of the same.

Books.

Deeds.

Papers.

.....

Petitioner.

Oath to Amended Schedule B-1.

United States of America,
Northern District of Indiana, } ss.
County of Huntington.

On this 21st day of December, A. D. 1936 before me personally came James M. Wright the person mentioned in and who subscribed to the foregoing Amended Schedule B[1], and who being by me first duly sworn, did declare the said Schedule to be a statement of all his real estate mortgaged to The Union Central Life Insurance Company.

James M. Wright.

Subscribed and sworn to before me this 21st day of December, 1936.

My Commission expires May 29, 1938.

(Seal)

Homer E. Bailey,
Notary Public.
(Official Character)

10 (Endorsed) U. S. District Court * * (Caption—2073) * * Amended Schedules. Tendered Dec 23 1936. Margaret Long, Clerk U. S. District Court. Cook & Bailey, Attorneys for Bankrupt (P. O. Address) Huntington, Indiana.

Dec. 31, 36. 11 And afterwards, to-wit: on the 31st day of December, 1936, Debtor files Second Paragraph of Application to Amend Schedules, which second paragraph reads in the words and figures following, to-wit:

12 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

SECOND PARAGRAPH OF APPLICATION TO AMEND SCHEDULES.

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, Debtor in said Cause and for a second paragraph of application asks the Court to grant him leave to amend his schedules A-2 and B-1 and respectfully represents to the Court:

That prior to the filing of his petition in bankruptcy he was the owner of and had conveyed part of his real estate covered by the mortgage of the Union Central Life Insurance Company to his son-in-law John E. Coon being the northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana and the southeast quarter of said quarter to his daughter, Edna E. Coon; that he conveyed the southeast quarter of the southwest quarter of section 31, said Township, County and State to his wife, Emma G. Wright, and that he conveyed to his son, Walter C. Wright the north one-half of the northwest quarter of section 4, township 23 north of range 13 east, in said county and state. That each of said conveyances was without any money consideration and was made subject to the mortgages of said Union Central Life Insurance Company. That all of his land made one farm and he continued to reside on said farm with said children and assisted in farming the same and received part of the rents and
13 profits thereof. That on October 29, 1934, he filed his petition and schedules herein and set out all of said real estate and showed it was incumbered by said mortgages to said Union Central Life Insurance Company which was approved by said Court and duly referred. That on May 27, 1935, said creditor recovered a personal judgment on said note against the debtor for the sum of $11,975.11 and a decree foreclosing said mortgage and a deficiency judgment over

against him and that afterwards said real estate was sold at sheriff's sale and bid in by said creditor for the amount of said judgment. That by virtue of his liability on said mortgages and on said judgment and decree he was interested in said real estate and had the right to redeem from the sale thereof on said mortgages and decree.

That before said judgment and decree on April 13, 1935, said children had conveyed all of said real estate back to him and he is still the owner thereof and was the owner of said real estate on October 11, 1935, when he filed his amended petition under Subsection (s) of the Act of August 28, 1935.

That a clerk in the office of the Conciliation Commissioner of Jay County, Indiana, made out his original petition and said Commissioner did not advise him to set out said facts as to his rights in said real estate and said matter was not explained in said schedules.

That by virtue of said original petition and schedules and said re-conveyances and his amended petition herein said real estate became assets in his estate in bankruptcy for the benefit of his creditors named in said schedules.

Wherefore he asks the Court to grant him leave and to allow him to amend said schedules to show the above facts and reinstate said real estate and he files herewith said amended schedules.

James M. Wright,
Debtor.

Subscribed and sworn to before me this 31st day of December 1936.

(Seal) Margaret Long,
Clerk, U. S. District Court.

Cook & Bailey,
Attys.

(Endorsed) Filed Dec. 31 1936. Margaret Long, Clerk. Entered Dec 1936.

14 And now the application of Debtor to Amend his Schedules A-2 and B-1 is denied by the Court, to which ruling of the Court the debtor at the time excepts.

25 And now the Debtor files Notice of Appeal, with proof of service endorsed thereon, which Notice and Proof of service read in the words and figures following, to wit:

Jan. 7, 37. 26 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

NOTICE OF APPEAL FROM DECISION OF DISTRICT COURT.

Please take notice that James M. Wright, debtor and petitioner herein, has filed in the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, his petition for appeal and does hereby appeal from the order, decree and judgment of said District Court made and entered by the Hon. Thomas W. Slick, Judge of said Court and entered therein on the 31st day of December, 1936, denying the first and second paragraphs of application of Debtor to amend his Schedules, to the Circuit Court of Appeals for the Seventh Circuit to be held in and for said Circuit at the United States Court and Postoffice Building in the City of Chicago, Cook County, Illinois.

Dated this 7th day of January, 1937.

James M. Wright,
Debtor.

Samuel E. Cook,
Counsel for Appellant.

27 The undersigned, Roscoe D. Wheat, Attorney for the Union Central Life Insurance Company, hereby accepts service of the attached notice of appeal.

Dated this 8th day of January, 1937.

Roscoe D. Wheat,
Attorney for Appellee.

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

And afterwards, to-wit: on the 7th day of January, 1937, the Debtor files Petition for appeal, which Petition for appeal reads in the words and figures following, to-wit:

15 IN THE DSTRICT COURT OF THE UNITED STATES. Filed Jan. 1937.
• • (Caption—2073) • •

PETITION FOR APPEAL FROM DECISION OF DISTRICT COURT.

James M. Wright, the petitioner herein says he is aggrieved by the order, decision and judgment of said District Court made and entered in the above Cause on December 31, 1936, denying his first and second paragraphs of Application to amend his Schedules, and does hereby appeal from said order, decision and judgment to the United States Circuit Court of Appeals for the Seventh Circuit and prays that his appeal be allowed by this Court and that the transcript of the record and proceedings and papers upon which the said order and decision was made, duly authenticated may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated this 7th day of January, 1937.

James M. Wright,
Debtor.

Samuel E. Cook,
Atty. for Appellant.

16 And now the Debtor files assignment of errors, which assignment of errors is in the words and figures following, to-wit:

17 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—2073) • •

ASSIGNMENT OF ERRORS.

Comes now James M. Wright, Appellant in said cause and makes and files the following assignment of errors upon which he will rely upon in the prosecution of his appeal from the decision denying his application to amend Schedules A-2 and B-1 of said District Court on December 31, 1936, and entered in said cause on said day, to-wit:

1. That said District Court erred in denying his application for leave to amend Schedules A-2 and B-1.
2. That said Court erred in denying the application for

leave to file Amended Schedules A-2 and B-1, in the form as tendered with and attached to said application.

3. That said application shows that said James M. Wright had conveyed said real estate without any consideration to his children and subject to the mortgage of said creditor (The Union Central Life Insurance Company). That the debtor remained in possession of said land, assisted in farming the same and received part of the rents; that he was still liable to pay said notes; that on April 13, 1935, said children conveyed said land back to the debtor; that on May 27, 1935, said creditor recovered a personal judgment against the debtor for the amount due on said loan and foreclosed said mort-
18 gage against him; that afterwards on October 11, 1935, said debtor filed his amended petition under Subsection (s) of the Bankruptcy Act of August 28, 1935; that by virtue of being liable on said loan and mortgage he was interested in said real estate and had the right to redeem from said sale; that he fully owned said land when said mortgage was foreclosed and on August 28, 1935, when said new Act was passed and on October 11, 1935, when he filed his amended petition under said Subsection (s); that he was and is entitled to the benefits of said Act and that said real estate became assets of said estate in bankruptcy for the benefit of his creditors other than said mortgagee. Hence, the Court erred in not granting him leave to amend said Schedules and leave to file the same and in not restoring and reinstating said real estate in said Schedules as part of the assets of said estate.

4. That said Court erred in holding that the debtor was not entitled to the benefits of the provisions of the amended Subsection (s) of Section 75 of the Bankruptcy Act of August 28, 1935.

5. That the Court erred in depriving the debtor of the benefits and relief granted in said amended Subsection (s) of August 28, 1935.

That in order that the foregoing assignment of error may be and appear of record the debtor presents the same to the Court and prays that such disposition be made thereof in accordance with law, the statutes and general orders in bankruptcy No. 11 of the United States in such case made and provided and said appellant prays that this Circuit Court of Appeals reverse and set aside in all things said decision and order of said District Court appealed from herein and to

order said Court to grant said application and the relief prayed for therein.

19

James M. Wright,
Debtor.

Counsel for Appellant,
Huntington, Indiana.

United States of America,
Northern District of Indiana,
County of Huntington.

James M. Wright, being duly sworn on his oath, says, That he is the debtor in the above cause and that the facts set out in the above assignment of errors are true in substance as he is informed and verily believes.

James M. Wright,
Debtor.

Subscribed and sworn to before me this 6th day of January, 1937.

My Commission expires May 29, 1938.

Homer E. Bailey,
Notary Public.

(Seal)

Samuel E. Cook,
Counsel for Appellant.

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

20 And the Court now enters an order granting said Petition for Appeal, which order reads in the words and figures following, to-wit:

21 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

Entered Jan 1937.

ORDER ALLOWING APPEAL.

On reading the petition of James M. Wright, dated January 7th, 1937, for appeal and consideration of the assignment of errors presented therewith, it is ordered that said appeal herein be allowed to the Circuit Court of Appeals for the Seventh Circuit as prayed for in said petition and the

Court orders that a certified transcript of the record and all proceedings in said cause be transmitted to the Clerk of this Court and to said Circuit Court of Appeals sitting at the Post Office Building in the City of Chicago, Illinois.

Dated January 7th, 1937.

Thos. W. Slick,
Judge United States District Court for the Northern District of Indiana, Fort Wayne Division.

Samuel E. Cook,
Counsel for Appellant.

31 And now the debtor files Showing as to Cost Bond in Appeal to Circuit Court of Appeals, which Showing reads in the words and figures following, to-wit: and is certified under the order of this Court (Pg. 21 above) granting the 2nd Appeals from said District Court to said Circuit Court of Appeals:

32 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

SHOWING AS TO COST BOND IN APPEALS TO CIRCUIT COURT OF APPEALS.

Comes now James M. Wright Appellant in said cause and shows to the Court that the action for the possession of the following real estate herein was tried in the Jay Circuit Court:

The north half of the northwest quarter of Section 4, Township 23 north, of range 13 east, in Jay County, Indiana.

That a term time appeal was taken by the debtor from the judgment in said cause to the Supreme Court of Indiana and a bond given which stays the execution of said judgment and said appeal is still pending in said Court.

That the action for the possession of the following part of said real estate herein was tried in the Adams Circuit Court:

The northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana, and the southeast quarter of said quarter and the southeast quarter of the southwest quarter of said section.

That the defendants took a term time appeal from the

judgment in said cause to the Supreme Court of Indiana and gave a bond which stays the execution of said judgment.

That said James M. Wright has taken an appeal from the decision of the District Court dated December 14, 1936,
33 and an appeal from the decision of said Court dated December 31, 1936.

That the only liability in each of said appeals is the costs therein. That these costs will have to be advanced as the appeal progresses.

Wherefore he asks the Court to fix the cost bond in each of said appeals at $200.00.

That said sureties on said bond as to said first appeal are the owners of property which is worth more than $500.00 over and above her indebterness and obligations and exemptions and he tenders said bonds and asks the Court to examine and approve the same and said John E. Coon surety on said second appeal bond is worth more than $200.00 above his exemptions and indebtedness.

James M. Wright,
Debtor.

Subscribed and sworn to before me this 7th day of January, 1937.

Jane H. Allen,
Dep. Clerk U. S. Dist. Court.

(Seal)

Samuel E. Cook,
Counsel for Appellant.

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

34 And afterwards, to-wit: on the 9th day of January, 1937, the Debtor files Cost Bond approved by the Court, which cost bond reads in the words and figures following, to-wit: and is certified under the order of this Court (Pg. 21 above) granting the 2nd Appeal from said District Court to said Circuit Court of Appeals: Filed Jan. 9, 1937.

35 Know All Men By These Presents:

That I, James M. Wright, Principal, the debtor in said Cause and Walter Wright and John Coon and Emily O. Sackett as sureties are held and firmly bound unto The Union Central Life Insurance Company, the creditor in said Cause, in the sum of Two Hundred Dollars of lawful money of the United States for the payment of which well and truly to be

made we bind ourselves and our representatives jointly and severally by these presents.

Witness our Hands this 6th day of January, 1937.

Whereas, said James M. Wright has filed his petition in said Court for an appeal from the decision and order of said Court on December 31, 1936, denying his application to amend Schedules A-2 and B-1 in said cause to the Circuit Court of Appeals of the Seventh Circuit.

Now, therefore, the condition of the above obligation is such that if said James M. Wright shall prosecute his appeal to effect and answer all costs and damages, if he fails to make his plea good, then this obligation shall be null and void; otherwise to be and remain in full force and effect in law.

Witness our Hands and Seals this 6th day of January, 1937.

James M. Wright,
Walter Wright,
John Coon,
Emily O. Sackett.

Tendered to the Judge of said Court this 7th day of January, 1937.

Samuel E. Cook,
Atty. for Appellant.

Examined and approved this 9th day of January, 1937.

Thos. W. Slick,
Judge District Court.

28 And now the Debtor files Petition to Enlarge Time for Filing Transcript on Appeal to Circuit Court of Appeals, and the Court now enters an order granting said Petition and enlarging the time as prayed for, which Petition and Order read in the words and figures following, to-wit:

29 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

PETITION TO ENLARGE TIME FOR FILING TRANSCRIPT ON APPEAL TO CIRCUIT COURT OF APPEALS.

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, the Appellant in said Cause and respectfully represents to the Court:

That this Court on December 23, 1936, allowed him an

appeal to the Circuit Court of Appeals for the Seventh Circuit.

That he filed his praecipe on December 31, 1936, in the office of the Clerk in the Fort Wayne Division at Fort Wayne, Indiana, for the preparation and certification of a transcript of the record in this cause to said Circuit Court of Appeals.

That in the citation filed herein the Court fixed January 30, 1937, as the return day in said Appeal.

That on account of the press of public business in the office of said Clerk in said District and Division, it will be impossible for said Clerk and Deputies to prepare said transcript of the proceedings in said cause for Appeal in time to file the same by said return day.

Wherefore the Appellant prays that the Court enlarge the time for filing said transcript of the record and copies of the praecipe with the Clerk of said Court of Appeals until February 20, 1937.

James M. Wright.

Subscribed and sworn to before me this 7th day of January, 1937.

Margaret Long,
Margaret Long,
(Sea) *Clerk.*

30 Samuel E. Cook.
Counsel for Appellant.

The above statement is correct. This 7th day of January, 1937. Entered Jan 1937.

Attest:
Margaret Long,
(Seal) *Clerk District Court.*

The above petition is granted and the time to file said transcript is enlarged as prayed for to February 20, 1937.

Done this 7th day of January, 1937.

Thos. W. Slick,
Judge District Court.

Endorsed: Filed Jan 7 1937 Margaret Long, Clerk.

36 And afterwards, to-wit: on the 13th day of January, 1937, Debtor files Praecipe for Record on Appeal, together with proof of service endorsed thereon, which Praecipe and Proof of Service, read in the words and figures following, to-wit:

d Jan. 13, 937.

37 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

PRAECIPE FOR RECORD ON APPEAL.

To the Clerk of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division:

Please prepare and certify forthwith a transcript of the following records in the above entitled cause on appeal, to the United States Circuit Court of Appeals for the seventh Circuit:

1. Debtor's application to amend Schedules A-2 and B-1.
2. Debtor's amended Schedules A-2 and B-1.
3. Second paragraph of Application to amend Schedules.
4. Order of Judge of this Court denying Debtor's Application to amend Schedules A-2 and B-1 and exception granted to the debtor.
5. Petition for appeal filed by James M. Wright.
6. Assignment of errors filed by James M. Wright.
7. Order allowing the appeal.
8. The following original documents shall be transmitted with the transcript, to-wit:

(a) The original citation on appeal, with proof of service endorsed thereon.

(b) The original notice of appeal, with proof of service endorsed thereon.

38 (c) Copy of praecipe for record on appeal filed by James M. Wright with proof of service endorsed thereon.

9. Also, petition and order enlarging the time for filing the transcript.

James M. Wright,
Debtor, by His Attorney.

Samuel E. Cook,
Attorney for Appellant.

The undersigned Attorney of record for said creditor hereby accepts service of the above Praecipe for record on appeal and the receipt of a copy thereof.
This 13 day of January, 1937.

Roscoe D. Wheat,
Attorney for Appellee.

Endorsed: Filed Jan. 13, 1937, Margaret Long, Clerk.

39 United States of America
Northern District of Indiana } ss:

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of the original orders and pleadings, as follows, to-wit:

Debtor's application to amend Schedules A-2 and B-1.

Debtor's amended Schedules A-2 and B-1.

Second paragraph of Application to amend Schedules.

Order of Judge of this Court denying Debtor's Application to Amend Schedules A-2 and B-1 and exception granted to the debtor.

Petition for appeal filed by James M. Wright.

Assignment of errors filed by James M. Wright.

Order allowing the appeal.

The original citation on appeal, with proof of service endorsed thereon.

The original notice of appeal, with proof of service endorsed thereon.

The original praecipe for record on appeal filed by James M. Wright with proof of service endorsed thereon.

Petition and order enlarging the time for filing the transcript.

Showing as to Cost Bond in Appeal to Circuit Court of Appeals.

Cost Bond and approval of Court.

said papers now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Fort Wayne, Indiana, this 15th day of February, A. D. 1937.

Margaret Long,
(Seal) *Clerk United States District Court for the Northern District of Indiana,*
By Jane H. Allen,
Deputy Clerk.

22 And now the Debtor files Citation on appeal, with proof of service endorsed thereon, which Citation and proof of service read in the words and figures following, to-wit:

23 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2073) * *

CITATION.

By the Honorable Thomas W. Slick, United States District Judge for the Northern District of Indiana.

To the Union Central Life Insurance Company:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Seventh Circuit, to be held at the City of Chicago, in the County of Cook, in the State of Illinois, on the 30th day of January, 1937, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Indiana, wherein James M. Wright, Debtor, is Appellant and you are Appellee, to show cause, if any there be, why the order entered in said cause mentioned, on the 31st day of December, 1936, should not be reversed and corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at Fort Wayne, in the State of Indiana, in the District and Circuit above named this 7th day of January, 1937, in the year of our Lord One Thousand Nine Hundred and Thirty-seven, and of the Independence of the United States One Hundred and Sixty first.

January 7, 1937.

Thos. W. Slick,
United States District Judge.

Attest:
Margaret Long,
Clerk.

24 The undersigned Attorney of record for said creditor hereby accepts service of the attached citation on appeal and the receipt of a copy thereof.

This 8 day of January, 1937.

Roscoe D. Wheat,
Counsel for Appellee.

Samuel E. Cook,
Counsel for Appellant.

Endorsed: Filed Jan. 7, 1937, Margaret Long, Clerk.

[fol. 1]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION

TRANSCRIPT ON FIRST APPEAL TO CIRCUIT COURT OF APPEALS

Pleas and Proceedings had before the Honorable Thomas W. Slick, Judge of the District Court of the United States, for the Northern District of Indiana, at a term of said Court, begun and held at the United States Court House in the City of Fort Wayne, Indiana, to-wit:

In Bankruptcy. No. 2073

In the Matter of JAMES M. WRIGHT, Debtor

[fol. 2] IN UNITED STATES DISTRICT COURT

Cause No. 2073

In the Matter of JAMES M. WRIGHT, Bankrupt

MOTION BY THE UNION CENTRAL LIFE INSURANCE COMPANY, for an Order to Strike Certain Real Estate from the Schedule and Inventory and Appraisement Filed in This Matter and an Order Against the Conciliation Commissioner Withdrawing Said Real Estate from His Jurisdiction and Control and an Order Against the Receiver Appointed by the Conciliation Commissioner Setting Aside and Vacating Any Leases or Contracts Entered Into by Him in Relation to Said Real Estate.—Filed July 29, 1936.

To the Hon. Thomas W. Slick, Judge, United States District Court:

Your petitioner, The Union Central Life Insurance Company, respectfully shows that on the 1st day of October, 1925, the bankrupt, James M. Wright, was the owner in fee simple of the following described real estate in Jay County, Indiana, to-wit:

The southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing One Hundred Sixty acres, more or less.

Also, the southeast quarter of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres, more or less.

Containing in both the above described tracts two hundred (200) acres, more or less.

That on said 1st day of October, 1925, to secure the payment of a note in the sum of $9,000.00, which was payable to this petitioner, the said James M. Wright and Emma G. Wright, his wife, executed and delivered to this petitioner their mortgage on said real estate, which mortgage was duly recorded in the office of the Recorder of Jay County, Indiana, on October 26, 1925, in Mortgage Record No. 43 at page 415.

That the said James M. Wright was also the owner of the [fol. 3] following described real estate in Jay County, Indiana, to-wit:

The North half of the northwest quarter of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, containing Eighty and thirty one hundredths (80.31) acres, more or less.

and that this petitioner held a mortgage lien on said real estate to secure the payment of a note calling for $3,000.00, which note and mortgage was executed by James M. Wright and wife.

That on the 14th day of October, 1931, the said James M. Wright and Emma G. Wright, his wife, executed and delivered a warranty deed to Walter C. Wright for the following described real estate in Jay County, Indiana, to-wit:

The North half of the Northwest quarter of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, containing eighty and thirty one hundredths (80.31) acres, more or less.

That said deed was filed for record in the office of the Recorder of Jay County, Indiana, on the 14th day of October, 1931, and was duly recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "A".

That on the 14th day of October, 1931, the said James M. Wright and Emma G. Wright, his wife, executed a warranty deed to Edna E. Coon to the following described real estate in Jay County, Indiana, to-wit:

The Southeast quarter of the southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing forty (40) acres.

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 14th day of October, 1931, and was recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "B".

That on the 14th day of October, 1931, James M. Wright and Emma G. Wright, his wife, executed a warranty deed to John E. Coon for the following described real estate in [fol. 4] Jay County, Indiana, to-wit:

The Northeast quarter of the Southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres,

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on October 14, 1931, and recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "C".

That on the 14th day of October, 1931, James M. Wright executed a warranty deed to Emma G. Wright, his wife, for the following described real estate in Jay County, Indiana, to-wit:

The Southeast quarter of the Southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres.

which deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 25th day of February, 1932, and recorded in Deed Record No. 80 at page 216 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "D".

That prior to October 30, 1934, this petitioner filed its complaint in Jay Circuit Court, Jay County, Indiana, against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright and Citizens Bank of Portland,

Indiana, for a personal judgment against James M. Wright and foreclosure of the mortgage executed by him as above set out in this petition and that said cause was venued from Jay County to Adams County, Indiana, and that while said action was pending and on said 30th day of October, 1934, the said James M. Wright filed his petition in bankruptcy under the Frazier-Lemke act; that the said James M. Wright filed a schedule of his property and included therein and in said schedule inventoried the above described real estate and made affidavit and oath that he was the owner of the same when in truth and in fact, he was not the owner of said real estate but had sold and conveyed the same as shown by Exhibits "A", "B", "C" and "D" filed herewith. [fol. 5] That long after the filing of said petition in bankruptcy by the said James M. Wright, to-wit: on the 13th day of April, 1935, Walter C. Wright and Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered a quit-claim deed to James M. Wright, for the following described real estate in Jay County, Indiana, to-wit:

The North one half (½) of the northwest quarter (½) of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, and the East one half (½) of the southeast quarter (¼) of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East.

Also the south half of the east half of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing 40 acres, more or less.

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 13th day of April, 1935, and Recorded in Deed Record No. 82 at page 38 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "E".

That on the 27th day of May, 1935, The Union Central Life Insurance Company secured a personal judgment against James M. Wright in the Adams Circuit Court in the sum of $11,975.11 and that foreclosure of its mortgage securing the same, which mortgage covers the two hundred acre tract of land above described in Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, and an order of foreclosure against this bankrupt, James M. Wright, and Walter C. Wright, Edna E.

Coon and John E. Coon, and the court ordered that a certified copy of said judgment be issued to the Sheriff of Jay County, Indiana, and that he sell said real estate as on execution; that the record shows that Emma G. Wright, the wife of James M. Wright, was deceased and that James M. Wright, Edna E. Coon and Walter C. Wright were her heirs at law.

That the sheriff of Jay County, Indiana, received a certified copy of said judgment, decree and order of sale and advertised said real estate for sale as required by the laws of the State of Indiana and advertised that said real estate [fol. 6] would be sold at the east door of the court house, Portland, Indiana, on the 20th day of July, 1935, and that on said 20th day of July, 1935, the sheriff did offer the real estate for sale at public auction and The Union Central Life Insurance Company bid the sum of $12,174.31 for the fee simple title of said real estate and that being the highest and best bid the said two hundred acres of land was struck off and sold to The Union Central Life Insurance Company and it having paid the amount of its bid, the sheriff executed and delivered to it a sheriff's certificate of sale and the year of redemption having expired and no one having redeemed said real estate, and The Union Central Life Insurance Company having retained possession and ownership of said sheriff's certificate of sale did on the 20th day of July, 1936, present said certificate of sale to the sheriff of Jay County, Indiana, and demanded a deed for said real estate and Tandy Ferguson, Sheriff of Jay County, Indiana, did on the 20th day of July, 1936, execute and deliver to The Union Central Life Insurance Company a sheriff's deed for said real estate, which deed was filed for record in the office of the Recorder of Jay County, Indiana, and recorded on the 20th day of July, 1936, in Deed Record No. — at page — and a copy of said deed is filed herewith, made a part hereof, and marked Exhibit "F".

That by reason of the deeds of James M. Wright, being Exhibits "A", "B", "C" and "D" and by reason of the foreclosure of the mortgage executed by him and the sale of said real estate and his failure to redeem said real estate, the said James M. Wright, bankrupt, has no right, title or interest in and to said real estate nor is there any equity therein for his creditors and that The Union Central Life Insurance Company is now the absolute owner of said real estate and entitled to the possession thereof and entitled to

have its title thereto cleared and quieted as to James M. Wright and his creditors.

[fol. 7] That this bankruptcy proceedings was referred to Hon. Bryon G. Jenkins, conciliation commissioner, and the said conciliation commissioner appointed one Carmen Alexander as receiver of said real estate and the said Carmen Alexander has entered into a lease contract which involves said real estate and the title thereto and the controls of said conciliation commissioner and that of Carmen Alexander as receiver, should be set aside and vacated and any contract entered into by said receiver in relation to said real estate should be set aside, vacated and declared at naught.

That notice has been served upon James M. Wright, Edna E. Coon, John E. Coon, Walter C. Wright, Byron G. Jenkins and Carmen Alexander that this petition will be presented and filed with the referee in bankruptcy and proof of the service of said notice is filed herewith.

Wherefore, your petitioner moves the court for an order striking out and removing from the schedule filed in this cause and the inventories and appraisements filed in this cause the real estate above described and removing the same as any part of the assets claimed by said bankrupt and that the said Hon. Byron G. Jenkins, conciliation commissioner, be ordered and directed to remove and release said real estate from any claim of jurisdiction on his part and that the said Carmen Alexander, as receiver, appointed by the conciliation commissioner, be ordered to release his jurisdiction, if any, over said real estate and to cancel any and all contracts entered into by him in relation thereto and for all other proper relief.

The Union Central Life Insurance Company, by Roscoe D. Wheat, its attorney.

[fol. 8] *Duly sworn to by Roscoe D. Wheat. Jurat omitted in printing.*

[fol. 9] EXHIBIT "A" TO MOTION

No. 9300

James M. Wright et ux to Walter C. Wright:

This Indenture Witnesseth, That James M. Wright and Emma G. Wright, his wife, of Jay County, in the State of

Indiana convey and Warrant to Walter C. Wright, of Jay County, in the State of Indiana, for and in consideration of One dollar ($1.00) and other valuable considerations, the receipt where of is hereby acknowledged, the following described Real Estate in Jay County in the State of Indiana, to wit:

The north half of the northwest quarter of section four (4) township twenty three (23) north, range thirteen (13) east, containing eighty and thirty one hundredths acres (80.31) more or less;

Subject to a mortgage of $3000.00, given by the grantors herein to The Union Central Life Insurance Company (Mortgage Record 43, page 416).

In Witness Whereof, the said James M. Wright and Emma G. Wright, his wife, have hereunto set their hands and seals, this 14th day of Oct. 1931.

Emma G. Wright. (Seal.) James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said county and State, this 14th day of October, A. D. 1931, personally appeared the within named James M. Wright and Emma G. Wright, his wife, grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

M. M. Mellinger, Notary Public. My commission expires Sept. 4, 1932, (L. S.)

Filed Oct. 14, 1931, at 3:30 P. M.

Jessie B. Humphries, R. J. C.

[fol. 10] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, and State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright (et ux) to Walter C. Wright, filed and recorded on the 14th day of October, 1931, in Deed Rec-

ord No. 80 at page 83 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14th day of July, 1936.

Daisy B. Heller, Recorder Jay County. (Seal.)

[fol. 11] EXHIBIT "B" TO MOTION

This Indenture Witnesseth, That James M. Wright and Emma G. Wright, his wife, of Jay County, in the State of Indiana, for and in consideration of One Dollar ($1.00) and other considerations, Dollars, the receipt whereof is hereby acknowledged, the following described Real Estate in Jay in the State of Indiana, to-wit:

Convey and Warrant to Edna E. Coon of Jay County, in the State of Indiana The Southeast Quarter of the southeast Quarter of Section thirty one (31), Township twenty four (24) north, range thirteen (13) east, containing forty (40) acres, more or less.

Subject to a mortgage indebtedness of $2500.00 of a certain mortgage given by the grantors herein to The Union Central Life Insurance Company, calling for $9000.00, Mortgage Record 43, page 415;

In Witness Whereof, the said James M. Wright and Emma G. Wright, his wife, have hereunto set their hands and seals, this 14th day of October, 1931.

Emma G. Wright. (Seal.) James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 14th day of October, A. D. 1931, personally appeared the within named James M. Wright and Emma G. Wright, his wife, grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

M. M. Mellinger, Notary Public. My commission expires Sept. 4, 1932. (L. S.)

Filed October 14, 1931 at 3:30 P. M.

Jessie Hurphries R. J. C.

[fol. 12] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright (et ux) To Edna E. Coon, filed and recorded on the 14th day of October, 1931, in Deed Record No. 80 at page 83 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder this 14th day of July, 1936.

Daisy B. Heller, Recorder of Jay County. (Seal.)

[fol. 13] EXHIBIT "C" TO MOTION

No. 9302

James M. Wright et ux to John E. Coon:

This Indenture Witnesseth, That James M. Wright and Emma G. Wright, his wife, of Jay County, in the State of Indiana, Convey and Warrant to John E. Coon of Jay County, in the State of Indiana for and in consideration of One Dollar ($1.00) and other considerations the receipt whereof is hereby acknowledged the following described Real Estate in Jay County in the State of Indiana, to wit:

The northeast quarter of the Southeast quarter of section thirty—(31), township twenty four (24) north, range thirteen (13) east, containing forty (40) acres more or less.

Subject to a mortgage indebtedness of $1500.00, of a mortgage indebtedness to The Union Central Life Insurance Company of $9000.00 (Mortgage Record 43, page 415).

In Witness Whereof, the said James M. Wright and Emma G. Wright, his wife, have hereunto set their hands and seals, this 14th day of October, 1931.

Emma G. Wright. (Seal.) James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 14th day of October, A. D. 1931,

personally appeared the within named James M. Wright and Emma G. Wright, his wife, Grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

M. M. Mellinger, Notary Public. My commission expires Sept. 4, 1932. (L. S.)

Filed October 14, 1931, at 3:30 P. M.

Jessie B. Humphries R. J. C.

[fol. 14] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright (et ux) to John E. Coon, filed and recorded on the 14th day of October, 1931, in Deed Record No. 80 at page 83 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14th day of July, 1936.

Daisy B. Heller, Recorder, Jay County. (Seal.)

[fol. 15] EXHIBIT "D" TO MOTION

No. 10343

James M. Wright to Emma G. Wright:

This Indenture Witnesseth, That James M. Wright of Jay County, in the State of Indiana Convey and Warrant to Emma G. Wright, the wife of the grantor, herein of Jay County, in the State of Indiana, for and in consideration of One Dollar ($1.00) and other considerations of Value, Dollars, the receipt whereof is hereby acknowledged, the following described Real Estate in Jay County in the State of Indiana, to wit:

The southeast quarter of the southwest quarter of section thirty one (31), township twenty four (24) north, range thirteen (13) east, containing forty acres, more or less.

Subject to a mortgage indebtedness of $1400.00, of a certain mortgage given by the grantors herein to The Union Central Life Insurance Company, Mortgage Record 43, page 415.

In Witness Whereof, The said James M. Wright has hereunto set his hand and seal, this 14th day of October, 1931.

James M. Wright. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 14th day of October, A. D. 1931, personally appeared the within named James M. Wright, Grantor in the above conveyance, and acknowledged the same to be his voluntary act and deed, for the uses and purposes herein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed by official seal.

M. M. Mellinger, Notary Public. My commission expires Sep. 4, 1932, (L. S.).

Filed February 25, 1932, at 2:55 P. M.

Jessie B. Humphries, R. J. C.

[fol. 16] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, State of Indiana, hereby certify the above and foregoing to be a full, true, correct and complete copy of the record of a Deed James M. Wright to Emma G. Wright, filed and recorded on the 25th day of February, 1932, in Deed Record No. 80 at page 216 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14th day of July, 1936.

Daisy B. Heller, Recorder, Jay County. (Seal.)

[fol. 17] EXHIBIT "E" TO MOTION

No. 18176

Walter C. Wright et al. to James M. Wright:

This Indenture Witnesseth, That Walter C. Wright and Virgie M. Wright, his wife; John E. Coon and Edna E.

Coon, husband and wife, of Jay County in the State of Indiana, Release and Quit Claim to James M. Wright of Jay County, in the State of Indiana, for and in consideration of One ($1.00) dollar, the receipt whereof is hereby acknowledged, the following described Real Estate in Jay County in the State of Indiana, to wit:

The north one half (½) of the northwest quarter (¼) of section four (4) township twenty three (23) north, range thirteen (13) east, and the East one half (½) of the southeast quarter (¼) of section thirty one (31), township twenty four (24) north, range thirteen (13) east.

Also the south half of the east half of the southwest quarter of section thirty one (31) township twenty four (24) north, range thirteen (13) east, containing 40 acres, more or less.

In Witness Whereof, the said grantors Walter C. Wright and Virgie M. Wright, his wife, and John E. Coon and Edna E. Coon, husband and wife, have hereunto set their hands and seals, this 13th day of April, 1935.

Walter C. Wright. (Seal.) John E. Coon. (Seal.)
Virgie M. Wright. (Seal.) Edna E. Coon. (Seal.)

STATE OF INDIANA,
Jay County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 13th day of April, A. D. 1935, personally appeared the within named Walter C. Wright and Virgie M. Wright, his wife, and John E. Coon and Edna E. Coon, husband and wife, Grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed, for the uses and purposes hereinmentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

Idora Holmes, Notary Public. My commission expires March 9th, 1937, (L. S.).

Filed April 13, 1935, at 3:50 P. M.

Jessie B. Humphries, R. J. C.

[fol. 18] STATE OF INDIANA,
Jay County, ss:

I, Daisy B. Heller, Recorder in and for Jay County, and State of Indiana, hereby certify the above and foregoing to

be a full, true, correct and complete copy of the record of a Deed Walter C. Wright et al. to James Wright, filed and recorded on the 13th day of April, 1936, in Deed Record No. 82 at page 38 as the same appears upon record on file in my office.

Witness My Name and seal as Recorder, this 14 day of July, 1936.

Daisy B. Heller, Recorder of Jay County. (Seal.)

[fol. 19] EXHIBIT "F" TO MOTION

Sheriff's Deed on Execution or Decree

This Indenture Witnesseth, That Tandy Ferguson, as Sheriff of Jay County, in the State of Indiana, by virtue of a certificate of purchase dated on the 20th day of July, 1935, issued by Tandy Ferguson who at that time was Sheriff of said County, to The Union Central Life Insurance Company showing the purchase by The Union Central Life Insurance Company of the Real Estate hereinafter described for the sum of Twelve thousand one hundred seventy four Dollars and thirty one Cents, the receipt whereof is hereby acknowledged, on a sale made by virtue of certified decree issued out of the Circuit Court of Adams County, in the State of Indiana (see Execution Docket No. 1, page 463), upon a judgment rendered by the Judge of the Adams Circuit Court, on the 27th day of May, 1935, in Cause No. 14942 wherein The Union Central Life Insurance Company is plaintiff and James M. Wright, et al. are defendant (see Order Book No. 68, page 335), in consideration of said sum of Twelve thousand one hundred seventy four and 31/100 Dollars, conveys to The Union Central Life Insurance Company of Hamilton County and State of Ohio in pursuance of said certificate of purchase, the following Real Estate, situate in Jay County, to wit: The Southeast Quarter of section thirty-one (31), township Twenty four (24) North, Range Thirteen (13) East, containing One Hundred Sixty (160) acres, more or less. Also the southeast quarter of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres, more or less. Containing in both the above described tracts two hundred (200) acres, more or less. To have and

to hold the premises aforesaid, with the privileges and appurtenances to the said purchaser, heirs and assigns forever, in as full and ample a manner as the same was held by James M. Wright et al. as described in said certificate of purchase and sold as property of James M. Wright, et al.

[fols. 20-21] In Witness Whereof, I the undersigned, Sheriff aforesaid, have hereunto set my hand and seal, this 20th day of July, 1936.

—— ——, Sheriff, Jay County.

STATE OF INDIANA,
Jay County, ss:

Before the undersigned, Notary Public in and for said County, this day personally appeared Tandy Ferguson, who in the capacity of Sheriff of said County, acknowledged the execution of the foregoing indenture, as his act and deed for the purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and official seal this 20th day of July, A. D. 1936.

—— ——, Notary Public. My commission expires —— —, ——.

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO MOTIONS TO STRIKE OUT CERTAIN REAL ESTATE FROM SCHEDULES—Filed November 6, 1936

Comes now James M. Wright, petitioner herein, and for answer and objections to the motions of The Union Central Life Insurance Company to strike certain real estate from his Schedules, alleges:

That he filed his petition and Schedules under Section 75 of the Bankruptcy Act in the United States District Court for the Northern District of Indiana, Fort Wayne Division, on the 30th day of October 1934; that said cause was referred to Bryon G. Jenkins, Conciliation Commissioner of Jay County, Indiana; that all the steps under said Section 75 were taken; that later petitioner amended his petition under Subsection (s) of Section 75, as amended August 28, 1935, and he was duly adjudged a Bankrupt.

That subsequent thereto, on the 24th day of February,

1936, an agreement was entered into between Carman Alexander, the duly appointed, qualified and acting Trustee in Bankruptcy of James M. Wright, the petitioner herein, party of the first part and James M. Wright, party of the second part. That said Trustee rented the real estate set out in petitioner's petition and Schedules to him by virtue of what is known as the Frazier-Lemke Act (Subsection (s) of Section 75, as amended August 28, 1935) for a period covering the Bankruptcy. That said agreement included the same tracts of real estate as set out in said motions of said Company. That said agreement was examined and [fols. 23-24] approved by Byron G. Jenkins, said Conciliation Commissioner and Referee, on the 24th day of February, 1936. That petitioner has farmed said real estate pursuant to said agreement since said date. That the rental provided for in said agreement has been turned over by petitioner to said Trustee, who holds the same subject to the order of said District Court.

Petitioner further alleges that said Union Central Life Insurance Company filed its complaint for possession of part of said real estate in the Jay Circuit Court and damages for its unlawful detention against petitioner et al. That judgment was rendered against the defendants in said cause, and petitioner et al. appealed from said judgment and said appeal is now pending in the Supreme Court of Indiana. That said Company also brought suit in the Adams Circuit Court for possession of the remainder of said real estate and judgment was rendered in favor of the plaintiff and defendants, including petitioner, filed their appeal bond and are now perfecting said appeal.

That said appeals stay all proceedings as to said judgments and the proceedings before said Conciliation Commissioner concerning said real estate.

Wherefore petitioner asks that the Conciliation Commissioner and Referee herein overrule said motions to strike out said real estate from said Schedules or continue the same until said Supreme Court decides said appeals and for all other proper relief in the premises.

Cook & Bailey & Wheeler Ashcraft, Attys. for Petitioner.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[fol. 25] IN UNITED STATES DISTRICT COURT

REPORT OF CONCILIATION COMMISSIONER—Filed December 3, 1936

November 6, 1936.

To the Hon. Thomas W. Slick, Judge U. S. District Court for Northern District of Indiana, Fort Wayne Division:

In the Matter of JAMES M. WRIGHT, Debtor

The undersigned Conciliation Commissioner begs to submit the following report of his doings herein:

September 6th, 1936. Verified motion by Union Central Life Insurance Company asking that all real estate set out in its petition be stricken from debtor's schedule and that the Trustee make a final report and be discharged as to specific real estate received.

October 26th, 1936. Notices by mail to all creditors advising of the filing of the motion and of the date of hearing set for November 6th, 1936.

November 6, 1936. Verified answer by debtor filed asking that the Commissioner recommend overruling of above motion, or asking continuance, pending the appeal of an action brought by Union Central Life Insurance Co., from the Jay Circuit Court and Adams Circuit Court to the Supreme Court of Indiana, on question of possession, filed.

Submission: Motion to strike out the real estate and for the discharge of Trustee, submitted.

By agreement of council, R. D. Wheat, Attorney for Union Central Life Insurance Company, and Cook & Ashcraft, attorneys for debtor, all evidence to be submitted to the commissioner are the admitted allegations in the verified motion by Union Central Life Insurance Co., and the verified allegations in the answer of debtor.

Upon examining the motion to strik[illegible] the real estate from debtor's schedule and that the [illegible]e herein make and file his final report as to the specific [illegible]eal estate set up in the motion of Union Central Life Insurance Company, and also upon examining the answer to said motion by the debtor, your commissioner finds:

[fol. 26] 1. That the real estate described in the schedule of debtor is identical with the real estate described in the

motion by Union Central Life Insurance Company, Excepting,

2. That there still remains in said schedule the following described real estate not effected by the motion, to-wit:

The south half of the northeast quarter of section 4, township 23 north range 13 east containing 80 acres.
Also, part of the east half of the north half of the southwest quarter section 4, township 23 north range 13 east, containing 1½ acres.

3. That the allegations in re the conveyances in the motion of Union Central Life Insurance Co. to strike certain real estate from the debtor's schedule are true and correct as shown by the records of the Recorder of Jay County, and that the motion in its entirety should be sustained.

Recommendations;

The real estate described by Union Central Life Insurance Company should be stricken from debtors schedule and the Trustee be ordered to file his final report as to said real estate.

The Original Petition, Schedule, Motion and Answer in this cause are returned herewith for the further order of the Court.

December 2, 1936.

Respectfully submitted, Byron G. Jenkins, Conciliation Commissioner, Jay County, Indiana.

December 2nd, 1936. Supplemental report:

The Trustee, Carman Alexander, together with the debtor, James M. Wright, called at the office today, and the Trustee reported that on the farms included in the schedule of debtor, the debtor has harvested about 300 bushe-s of soy beans and that the crop could be hauled to market now, and the two fifths of said beans could be turned over to the trustee, but that the attitude of debtor, James M. Wright is that he intends to hold all the crops there until the final disposition of the Fraser Lemke bill as to its con-
[fol. 27] stitutionality, if the bill is upheld, he will turn

over the two fifths, if unconstitutional, he will keep everything.

This is the Exact Attitude of Debtor.

Bryon Jenkins, Conciliation Commissioner.

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEBTOR'S PETITION TO REVIEW DECISION AND RECOMMENDATIONS OF REFEREE—Filed December 10, 1936

Comes now James M. Wright and files his petition for a review by the Honorable Judge of said District and Division of the decision and recommendations of said Referee, entered in said cause on December 2, 1936, at Portland, Indiana, in said Division, on the verified motion by Union Central Life Insurance Company asking that all real estate set out in its petition be stricken from Debtor's schedule and that the Trustee make a final report and be discharged as to specific real estate, on the following grounds:

1. Said Conciliation Commissioner and Referee erred in granting the petition of the Union Central Life Insurance Company to strike the real estate from the Debtor's Schedules.

2. Said Conciliation Commissioner and Referee erred in recommending that the real estate described in the mortgage of the Union Central Life Insurance Company be stricken from the Debtor's Schedules in Bankruptcy.

3. Said Conciliation Commissioner and Referee erred in not holding that the Trustee, Carmen Alexander, should continue to act as such and hold the Landlord's share of the crops in said real estate for three years from August 28, 1935, as provided in Subsection (s) of the Bankruptcy Act of said date.

4. That an action in which the validity of the Act last mentioned is now pending before the Supreme Court of Indiana in the case of Walter C. Wright and James M. Wright vs. The Union Central Life Insurance Company from the Jay Circuit Court and the jurisdiction and control [fol. 29] of said Cause is now therein and said Conciliation

Commissioner and Referee has no power or authority to interfere with said Cause until said Court decides said question. That said Debtor filed an appeal bond in said Appeal which was approved by said Jay Circuit Court which stays all proceedings therein and said Conciliation Commissioner and Referee had no power to interfere with said Cause while said Appeal is pending. That the land in said action is the same as in said Schedules.

Wherefore, the Debtor prays the Referee to certify this cause to the Judge of the United States District Court for the Northern District of Indiana, Fort Wayne Division, for review, as provided by law and that said decision and recommendations be held null and void and set aside.

James M. Wright, Debtor.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[fol. 30] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS

Comes now James M. Wright, Appellant in said Cause and files the following assignment of errors upon which he relies in the prosecution of his petition to review the decision and recommendations of said Conciliation Commissioner and Referee made December 2, 1936, in said Cause on the verified motion of the Union Central Life Insurance Company asking that all real estate set out in its petition be stricken from Debtor's schedule and that the Trustee make a final report and be discharged as to specific real estate, to-wit:

1. Said Conciliation Commissioner and Referee erred in granting the petition of the Union Central Life Insurance Company to strike the real estate from the Debtor's Schedules.

2. Said Conciliation Commissioner and Referee erred in recommending that the real estate described in the mortgage of the Union Central Life Insurance Company be stricken from the Debtor's Schedules in Bankruptcy.

3. Said Conciliation Commissioner and Referee erred in not holding that the Trustee, Carmen Alexander, should continue to act as such and hold the Lan-lord's share of the crops in said real estate for three years from August 28, 1935, as provided in Subsection (s) of the Bankruptcy Act of said date.

4. That an action in which the validity of the Act last mentioned is now pending before the Supreme Court of Indiana in the case of Walter C. Wright and James M. Wright vs. The Union Central Life Insurance Company from the Jay Circuit Court and the jurisdiction and control of said Cause is now therein and said Conciliation Commissioner and Referee erred in holding that he had the power and authority to determine the matters set out in said creditor's motion.

[fol. 31] The Debtor presents this assignment of errors to the Referee and prays that the same be certified to the Judge of the District Court of the United States, for the Northern District of Indiana, Fort Wayne Division, for review and that said decision and recommendations be reviewed by said Court in all things set aside.

James M. Wright, Debtor.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[fol. 32] IN UNITED STATES DISTRICT COURT

DEBTOR'S BRIEF ON ASSIGNMENT OF ERRORS

The Debtor, James M. Wright, now submits the following brief on his assignment of errors as to the ruling of the Referee in said Cause:

1. Section 75 and its Amendment, Subsection (s) August 28, 1935, are valid exercises of the powers of Congress over the subject of Bankruptcies.

2. The Constitution having clothed Congress with the power to legislate on the subject of bankruptcies, it is the sole judge of the means or law which it may adopt to carry out this Constitutional power. And any interference of the Courts with that discretion is an encroachment of the judiciary on the Legislative Department of the Government.

This is the rule laid down by Chief Justice Marshall and has been recognized and adhered to since his day.

Continental Ill. etc. vs. Chicago & Rock Island, etc., 72 Fed. (2d) 443. Same case on Appel., 79 L. Ed. (U. S.) 642.
McCulloch vs. Maryland, 4 L. Ed. (U. S.) 314.
Billings vs. U. S., 58 L. Ed. (U. S.) 606.
Martin vs. Hunter, 1 Wheaton, 304.
Cohens vs. Virginia, 6 Wheaton, 264.
Atkins vs. Kansas, 48 L. Ed. (U. S.) 158.
McCray vs. U. S., 49 L. Ed. (U. S.) 95.

3. Section 75 of the Bankruptcy Act and its Amendments are a proper exercise of the powers of Congress over the subject of Bankruptcies. It is an appropriate means or remedy of carrying out this power of Congress in the existing emergency as to farm Debtors and is supreme over all State Legislation and all of the rights of farm mortgages thereunder.

United States, etc. vs. Pamp, 77 Fed. (2nd), 9, 13.
Continental vs. C. R. I. etc., 79 L. Ed. 642, 651.

4. The equity of redemption relates only to the remedy and it can be changed and extended without impairing the obligation of the contract.

Home Building, etc. vs. Blaisdell, 78 L. Ed. 413.

[fol. 33] 5. The power of Congress to enact Section 75 of the Bankruptcy Act and its Amendments cannot be restricted by the Laws of Indiana or the rights of a mortgagee thereunder. Such rights must yield and give way to the Supreme Law of the Land.

6. As to whether this Bankruptcy Act and its Amendments were wise or proper remedies is a question in the discretion of Congress and the Courts have no power to interfere with that discretion.

McCulloch vs. Maryland and cases cited under proposition 2.

7. This Act of Congress cannot be held void because it conflicts with a law of Indiana.

Wherefore, the Debtor says that said orders and rulings of said Referee are void and should be set aside.

Respectfully submitted, Cook & Bailey, Attorneys for Debtor.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING PETITION FOR REVIEW, ETC.

And afterwards, to-wit: on the 14th day of December, 1936, comes the Debtor herein and now the Petition to Review heretofore filed is overruled by the Court, to which ruling of the Court the Debtor at the time excepts. And now the recommendation of the Conciliation Commissioner is approved and held valid by the Court, to which ruling of the Court Debtor at the time excepts.

[fols. 34-35] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL FROM DECISION OF DISTRICT COURT—Filed December 23, 1936

James M. Wright, the petitioner herein says he is aggrieved by the order, decision and judgment of said District Court made and entered in the above Cause on December 14, 1936, denying his petition to review the order and decision of Byron C. Jenkins, Referee in Bankruptcy in said Cause for Jay County, Indiana, and does hereby appeal from said order, decision and judgment to the United States Circuit Court of Appeals for the Seventh Circuit and prays that his appeal be allowed by this Court and that the transcript of the record of proceedings and papers upon which the said order and decision was made, duly authenticated may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated this 23 day of December, 1936.

James M. Wright, Debtor. Samuel E. Cook, Atty. for Appellant.

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed December 23, 1936

Comes now James M. Wright, Debtor in said Cause, and files the following assignment of errors with his petition

for appeal upon which he will rely in the prosecution of this appeal in the United States Court of Appeals for the Seventh Circuit in the above Cause from an order, ruling, decision and judgment made and entered by the Judge of said District Court on December 14, 1936, and says the order, ruling, decision and judgment in this Cause is erroneous and unjust for the following reasons, to-wit:

1. The District Court erred in refusing and denying the debtor's petition for review of the decision of the Referee herein.

2. The District Court erred in not reviewing the decision and order of the Referee and in not reversing and setting the same aside.

3. The District Court erred in not ordering said Referee to set aside the order he made therein striking said real estate from said schedules.

4. The District Court erred in striking out and removing said real estate described in said proceedings before said Referee from the schedules filed in this cause.

[fol. 37] 5. The District Court erred in not allowing the real estate described in said proceedings to be and remain in said schedules as part of the assets of said debtor's estate for the benefit of the creditors named in said schedules.

6. That by virtue of the original petition and schedules and the amended debtor's petition referring to said schedules filed October 11, 1935, under subsection (s) of the Bankruptcy Act said real estate was brought within the provisions of said Acts and into the District Court and the relief granted in said Acts and the District Court erred in striking out said real estate and denying him said relief.

7. That by virtue of said proceedings the creditors named in said petition had an interest in retaining said real estate as part of the assets of said estate and they could not be deprived of that right without notice and no notice was given to them or either of them of said hearing in said District Court.

8. That said District Court committed other plain errors at said hearing in denying said petition for review and striking said real estate from said schedules of which this Court should take notice.

9. That said errors of said District Court will greatly injure and damage the debtor and deprive him of his rights and relief under said subsection (s) of said Bankruptcy Act and deprive him of his constitutional rights under said Act.

[fols. 38-39] James M. Wright, Debtor.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[File endorsement omitted.]

[fols. 40-41] In United States District Court

[Title omitted]

Order Allowing Appeal

On reading the petition of James M. Wright, dated December 23, 1936, for appeal and consideration of the assignment of errors presented therewith, it is ordered that said appeal herein be allowed to the Circuit Court of Appeals for the Seventh Circuit as prayed for in said petition and the Court orders that a certified transcript of the record and all proceedings in said cause be transmitted by the Clerk of this Court and to said Circuit Court of Appeals sitting at the Post Office Building in the City of Chicago, Illinois.

Dated December 23, 1936.

Thos. W. Slick, Judge United States District Court for the Northern District of Indiana, Fort Wayne Division.

[fols. 42-44] Citation, in usual form, showing service on Roscoe D. Wheat, filed December 23, 1936 omitted in printing.

[fol. 45] In United States District Court

[Title omitted]

Notice of Appeal from Decision of District Court—Filed December 23, 1936

Please take notice that James M. Wright, debtor and petitioner herein, has filed in the District Court of the

United States for the Northern District of Indiana, Fort Wayne Division, his petition for appeal and does hereby appeal from the order, decree and judgment of said District Court made and entered by the Hon. Thomas W. Slick, Judge of said Court and entered herein on the 14th day of December, 1936, denying the petition of said Debtor to review the order and decision of Byron G. Jenkins, Referee in Bankruptcy in said cause, of Jay County, Indiana, to the Circuit Court of Appeals for the Seventh Circuit to be held in and for said Circuit at the United States Court and Postoffice Building in the City of Chicago, Cook County, Illinois.

Dated this 23rd day of December, 1936.

James M. Wright, Debtor.

[fol. 46] The undersigned, Roscoe D. Wheat, Attorney for the Union Central Life Insurance Company, hereby accepts service of the attached notice of appeal.

Dated this 23rd day of December, 1936.

Roscoe D. Wheat, Attorney.

[File endorsement omitted.]

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD ON APPEAL—Filed December 31, 1936

To the Clerk of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division:

Please prepare and certify forthwith a transcript of the following records in the above entitled cause on appeal, to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Motion of Union Central Life Insurance Company to strike out the real estate and for the discharge of Trustee.
2. Answer of James M. Wright, Debtor.
3. Conciliation Commissioner's and Referee's Report.
4. Conciliation Commissioner's and Referee's certificate to the Judge showing the question presented, a summary of the evidence relating thereto, and the finding and order of the Referee thereon.

5. Debtor's petition for review.
6. Debtor's assignment of errors, and brief thereon.
7. Order of the Judge of this Court denying Debtor's petition for review and exception granted to the Debtor.
8. Petition for appeal filed by James M. Wright.
9. Assignment of errors filed by James M. Wright.
10. Order allowing the appeal.

[fols. 48-49] 11. The following original documents shall be transmitted with the transcript, to-wit:

(a) The original citation on appeal, with proof of service endorsed thereon.

(b) The original notice of appeal, with proof of service endorsed thereon.

(c) Copy of præcipe for record on appeal filed by James M. Wright with proof of service endorsed thereon.

James M. Wright, Debtor, by Samuel E. Cook, His Attorney. Samuel E. Cook, Attorney for Appellant.

The undersigned Attorney of record for said creditor hereby accepts service of the above Præcipe for record on appeal and the receipt of a copy thereof.

This 31st day of December, 1936.

Roscoe D. Wheat, Attorney for Appellee.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION TO ENLARGE TIME FOR FILING TRANSCRIPT ON APPEAL TO CIRCUIT COURT OF APPEALS—Filed January 7, 1937

To the Hon. Thomas W. Slick, Judge of Said Court:

Comes now James M. Wright, the Appellant in said Cause and respectfully represents to the Court:

That this Court on December 23, 1936, allowed him an appeal to the Circuit Court of Appeals for the Seventh Circuit.

That he filed his præcipe on December 31, 1936, in the office of the Clerk in the Fort Wayne Division at Fort

Wayne, Indiana, for the preparation and certification of a transcript of the record in this cause to said Circuit Court of Appeals.

That in the citation filed herein the Court fixed January 20, 1937, as the return day in said Appeal.

That on account of the press of public business in the office of said Clerk in said District and Division, it will be impossible for said Clerk and Deputies to prepare said transcript of the proceedings in said cause for Appeal in time to file the same by said return day.

Wherefore the Appellant prays that the Court enlarge the time for filing said transcript of the record and copies of the præcipe with the Clerk of said Court of Appeals until February 20, 1937.

James M. Wright.

Subscribed and sworn to before me this 7th day of January, 1937. Margaret Long, Clerk. (Seal.)

[fols. 51-52] Samuel E. Cook, Counsel for Appellant.

The above statement is correct. This 7th day of January, 1937.

Attest: Margaret Long, Clerk, District Court.

The above petition is granted and the time to file said transcript is enlarged as prayed for to February 20, 1937.

Done this 7th day of January, 1937.

Thos. W. Slick, Judge District Court.

[File endorsement omitted.]

[fol. 53] In United States District Court

[Title omitted]

Showing as to Cost Bond on Appeals to Circuit Court of Appeals—Filed January 7, 1937

Comes now James M. Wright, Appellant in said cause and shows to the Court that the action for the possession of the following real estate herein was tried in the Jay Circuit Court:

The north half of the northwest quarter of Section 4, Township 23 north, of range 13 east, in Jay County, Indiana.

That a term time appeal was taken by the debtor from the judgment in said cause to the Supreme Court of Indiana and a bond given which stays the execution of said judgment and said appeal is still pending in said Court.

That the action for the possession of the following part of said real estate herein was tried in the Adams Circuit Court:

The northeast quarter of the southeast quarter of Section 31, Township 24 north, of range 13 east, in Jay County, Indiana, and the southeast quarter of said quarter and the southeast quarter of the southwest quarter of said section.

That the defendants took a term time appeal from the judgment in said cause to the Supreme Court of Indiana and gave a bond which stays the execution of said judgment.

That said James M. Wright has taken an appeal from the decision of the District Court dated December 14, 1936, [fols. 54-55] and an appeal from the decision of said Court dated December 31, 1936.

That the only liability in each of said appeals is the costs therein. That these costs will have to be advanced as the appeal progresses.

Wherefore he asks the Court to fix the cost bond in each of said appeals at $200.00.

That said sureties on said first appeal bond are the owners of property which is worth more than $500.00 over and above her indebtedness and obligations and exemptions and he tenders said bonds and asks the Court to examine and approve the same, and that said John E. Coon, surety on said second appeal bond is worth more than $200 above his exemption and indebtedness.

James M. Wright, Debtor.

Subscribed and sworn to before me this 7th day of January, 1937.

Jane H. Allen, Dep. Clerk, U. S. Dist. Court.

Samuel E. Cook, Counsel for Appellant.

[File endorsement omitted.]

[fol. 56] Bond on appeal for $200.00, approved and filed January 9, 1937, omitted in printing.

[fols. 57-59] Clerk's certificates to foregoing transcript omitted in printing.

[fol. 1] [Caption Omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

6183–6184

In the Matter of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT, Appellant,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY, Appellee

Appeals from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

RECITAL AS TO DOCKETING

And, to-wit: On the twentieth day of February, 1937, the above entitled causes were docketed in this Court.

[fol. 2] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Two Appeals from the Decision of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, Hon. Thomas W. Slick, Judge.

No. 6183. No. 6184

In the Matter of the Bankruptcy of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT, Debtor, Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, Appellee

PETITION TO CONSOLIDATE APPEALS AND PRINT BUT ONE RECORD, ETC.—Filed March 11, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals, Seventh Circuit:

The petition of James M. Wright, Appellant in the above Cause, respectfully shows to the Court:

1. That Appellant was allowed Appeals from two decisions of said District Court in said Cause.

2. The first was from the action of the Court on December 14, 1936, in overruling or denying his petition to review the decision of the Referee in said Cause. The second was from the action of the Court on December 31, 1936, in denying his application to amend Schedules A-2 and B-1.

3. In the first the Referee had stricken certain real estate from the Schedules.

4. Appellant filed his petition asking the District Court to revie v this order. The Court overruled the petition and [fol. 3] approved the action of the Referee, to which he excepted and on his petition was allowed an appeal to this Court.

5. Appellant then filed his application to amend his Schedules A-2 and B-1 so as to include said real estate and filed therewith his amended schedules. The Court denied this application, to which he excepted and on his petition was allowed a second appeal to this Court.

6. It is plain Appellant had to appeal from the first decision, striking it out, or be bound thereby.

7. Appellant concluded that the proceedings before the Referee did not set out all of the facts in relation to his interest in the real estate and that in order to protect his rights he would have to apply to the Court for leave to amend said schedules, as provided in General Orders in Bankruptcy No. 11.

8. In other words, Appellant concluded that the proper remedy was to ask the Court to allow him to amend his schedules and show his interest in the land at the time he filed his petition in bankruptcy. That this would cure the situation and give the Court an opportunity to rectify any error there might be in the first ruling, in striking out what he deemed to be part of the assets of his estate.

9. This is not the time nor place to discuss the merits of whether the land should be in the schedules or out. To make a long story short: The Appellant wants to leave the land in, while the Appellee wants to leave it out. It is apparent that both appeals present the same identical question. It is also plain that the application to amend under Order No. 11 would be the most appropriate method of

presenting and settling the question as to whether he rightfully included the land embraced in Appellee's mortgage in his petition in Bankruptcy. The Appellee will not be harmed by allowing the question to be presented in this way.

[fols. 4-7] 10. Since it is shown here that the second appeal, No. 6184, sets out more facts than are set out in the proceedings in the first, Appellant urges that the first appeal of December 14, 1936, should be consolidated with the second of December 31, 1936, No. 6184 and that only the record in the last be printed and that the record in the first be not printed and that only one set of briefs be prepared, printed and filed in the consolidated appeal. That each of said appeals has been docketed and he has paid the fee of $25.00 in each.

11. That to require him to have both of said transcripts printed and two sets of briefs prepared and printed would impose upon him an unnecessary expense which he can not bear at this time. Section 734 of the Judicial Code suggests a liberal policy on this question. (U. S. Code 1928, page 957).

Wherefore Appellant prays the Court to grant the petition herein and order said first appeal, No. 6183, consolidated with No. 6184; that it order only the transcript in said No. 6184 printed and that the transcript in No. 6183 be not printed; that the Court further order but one set of briefs be prepared, printed and filed herein and that the further proceedings herein be carried on in said consolidated case.

Respectfully submitted, Samuel E. Cook, Counsel for Appellant.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[fol. 8] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 6183. No. 6184

[Title omitted]

OBJECTIONS TO PETITION AND MOTION OF THE APPELLANT TO CONSOLIDATE APPEALS—Filed March 13, 1937

And now comes The Union Central Life Insurance Company, a corporation, appellee in the above causes, and files

this, its objections to the petition of the appellant to consolidate the above appeals, and which petition further prays that the Clerk of the United States Circuit Court of Appeals print but one record.

This appellee objects to the consolidation of the first appeal, No. 6183, with appeal No. 6184 for the following reasons:

1. The appeal in Cause No. 6183 is from the ruling of the United States District Court for the Northern District of Indiana, Fort Wayne Division, on an order entered on [fol. 9] December 14, A. D., 1936, which order of said date confirmed the recommendation of the Referee. The statement contained in Paragraph No. 2 of the Petition to Consolidate is in error in that it states that the appeal in Cause No. 6183 is based on an order of the United States District Court on December 14, 1936, overruling or denying the appellant's petition to review the decision of the Conciliation Commissioner in said cause.

2. The appeal in Cause No. 6184, pending in this Court, is based upon an order of the Court entered on December 31, 1936, denying the petition of the appellant to amend Schedules A-2 and B-1, which attempt on the part of the appellant during the pendency of the proceedings in the United States District Court for the Northern District of Indiana, was to do something which the United States District Court refused to allow by its order entered on December 14, 1936, and the appeal from the order of December 31, 1936, is predicated upon a different premise.

3. The appellee further objects to the petition to consolidate the two appeals, and particularly objects to the petition of the appellant for leave to have printed but one record, and that is the record in Cause No. 6184, as suggested by the appellant, for the following reasons:

The bankrupt, to-wit, the appellant, first filed his petition in the United States District Court for the Northern District of Indiana, Fort Wayne Division, and included certain real estate upon which complete foreclosure had been had, and in which real estate the said bankrupt, appellant, had only an equity of redemption. At the time of the filing of the petition to be adjudicated a bankrupt, the title to the real estate in question was in other persons and [fol. 10] not in the name of the bankrupt. A motion to strike

this real estate from the schedule of the bankrupt was filed and an answer to said motion filed by the bankrupt. After hearing, the Conciliation Commissioner recommended to the United States District Court for the Northern District of Indiana, Fort Wayne Division, that the motion of the appellee to strike said real estate from the schedule of the bankrupt be sustained, and after due certification of said recommendation and hearing by the United States District Court for the Northern District of Indiana, said recommendation of the Conciliation Commissioner was approved and the real estate in question ordered stricken from the schedules. An appeal was taken from this order and said appeal is represented in this Court as Cause No. 6183.

Thereafter, the bankrupt, appellant in this cause, filed a motion in the United States District Court for the Northern District of Indiana, to reinstate the real estate in question and this motion was presented and overruled by Honorable Judge Slick, of the United States District Court for the Northern District of Indiana. On this ruling an appeal was taken and represented in this Court by Cause No. 6184. In the latter appeal no evidence was heard or presented but in Cause No. 6183 the issue upon which the appeal was taken was submitted by agreement of the parties.

The appellee in this cause, therefore, objects to the submission of this matter upon the record alone in Cause No. 6184, and objects to the consolidation of the appeals in Cause No. 6183 and Cause No. 6184.

4. The appellant states in Paragraph 9 of his petition to consolidate that both appeals present the same identical question. This is in error. The appellant sets forth in his [fols. 11-12] petition to consolidate in Paragraph 10 that the second appeal, to-wit, No. 6184, sets out more facts than are set out in the proceedings in the first. This is in error. In the first appeal, pending in this Court as Cause No. 6183, the verified motion of the appellee to strike the real estate in question from the schedule of the bankrupt, appellant, and the answer to said motion, were submitted to the Conciliation Commissioner by agreement. After examination of the question and certification thereof, and after hearing, the United States District Court for the Northern District of Indiana, Fort Wayne Division, sustained the recommendation of the Conciliation Commissioner, and the real estate

in question was ordered stri-ken from the bankrupt's schedule.

In the second appeal the facts are not similar.

5. As a further objection, the appellee respectfully represents that the motion to consolidate the two appeals should have properly been made before the United States District Court for the Northern District of Indiana, Fort Wayne Division, if, as the appellant sets forth, there would be unnecessary expenses involved in two appeals, and that question presented and discussed and passed upon by the lower court, which was informed and acquainted with the two distinct issues involved. In that case, if appellant is correct, a consolidated appeal would have been allowed and filed in this Court.

We respectfully submit that the motion to consolidate the two causes comes too late at this time.

Respectfully submitted, Roscoe D. Wheat, Arthur P. Feigen, Albert J. Feigen, Counsel for Appellee.

[fols. 13-14] In United States Circuit Court of Appeals

[Title omitted]

Order Consolidating Causes—March 16, 1937

On petition of counsel for appellant, It is now here ordered that Cause No. 6183 be consolidated with Cause No. 6184, and that the record in Cause No. 6184 be printed and the record in Cause No. 6183 be not printed.

It is further ordered that only one set of briefs be filed in said consolidated cause.

[fol. 15] In United States Circuit Court of Appeals

No. 6183, No. 6184

[Title omitted]

Motion for Leave to Refer to Transcript in Cause No. 6183—Filed April 14, 1937

And now comes The Union Central Life Insurance Company, a corporation, Appellee in the above causes, and files this, its Motion and Petition for leave to refer to the Transcript of Record in Cause No. 6183 in its Brief and Argument, and also for leave to direct the Clerk to print this Petition and the Court's order with reference thereto, and

to attach same to the printed Transcript of Record in Cause No. 6184.

For reasons for the above motion this Appellee sets forth the following:

1. The above proceedings arise on two appeals, being Cause No. 6183 and Cause No. 6184.

2. This Honorable Court, on March 16, 1937, entered an order consolidating the above appeals and further ordering that the Transcript of Record in Cause No. 6183 be not [fol. 16] printed, and that one set of Briefs be filed in the consolidated case. Said order was based upon the petition of the Appellant, to which petition objections were filed by this Appellee.

3. The appeal in Cause No. 6183 is from the ruling of the United States District Court, for the Northern District of Indiana, Fort Wayne Division, on an order entered December 14, 1936, which order of said date confirmed the recommendation of the Referee. At the time that the petition in said proceedings, to-wit: Cause No. 6183, was filed by the bankrupt (Appellant), said James M. Wright, bankrupt, Appellant, was not the owner of the real estate in question. The appeal in Cause No. 6183 is predicated upon the ruling of the United States District Court, for the Northern District of Indiana, Fort Wayne Division, striking said real estate from the schedules of said bankrupt.

4. Subsequent to the entry of said order on December 14, 1936, the real estate in question was deeded back by the then owner to the bankrupt, Appellant in the above proceedings, and the United States District Court, for the Northern District of Indiana, Fort Wayne Division, entered an order on December 31, 1936, pursuant to the motion of the Appellant, denying the Appellant's motion to amend Schedules A-2 and B-1 to include said real estate. The second appeal, in Cause No. 6184, is predicated upon that ruling.

5. The printed Transcript of Record in Cause No. 6184 does not show the above facts and it is necessary for this Appellee, in order to bring said facts properly before this Honorable Court, to be able to refer to the Transcript of Record in Cause No. 6183.

6. There are also other facts set forth in the appeal num- [fols. 17-18] bered Cause No. 6183, and which facts the Ap-

pellee believes are pertinent and necessary to be brought before the Court in the Appellee's Brief and Argument.

Wherefore, this Appellee moves and prays this Honorable Court for leave to refer to the Transcript of Record in Cause No. 6183 in the Appellee's Brief and Argument, and also for directions to the Clerk of the United States Circuit Court of Appeals to have this petition printed and this Court's order with reference to this petition of the Appellee printed and to attach said printed petition and Court's order to the printed Transcript of Record in Cause No. 6184.

Respectfully submitted, Roscoe D. Wheat, Arthur P. Feigen, Albert J. Feigen.

[fols. 19-20] IN UNITED STATES CIRCUIT COURT OF APPEALS.

[Title omitted]

ORDER GRANTING MOTION—April 16, 1937

It is ordered by the Court that that part of the petition of appellee for leave to refer in the appellee's brief and argument to the transcript of the record in Cause No. 6183, which is not printed, be, and the same is hereby granted.

It is further ordered that that part of the petition of Appellee for directions to the Clerk of this Court to have this Petition and this Court's order with reference thereto printed and attached to the copies of the printed record in Cause No. 6184, be, and the same is hereby denied.

[fol. 21] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

Appeal No. 6183-6184, Consolidated

[Title omitted]

APPELLANT'S PETITION TO RESTRAIN THE APPELLEE AND THE SHERIFF OF JAY COUNTY, INDIANA, FROM EXECUTING THE JUDGMENT OF THE STATE COURT AND REMOVING HIM AND HIS TENANT FROM THE REAL ESTATE HEREINAFTER DESCRIBED—Filed June 11, 1937

Comes now James M. Wright, the Appellant in the above entitled Cause, and respectfully represents to the Court:

That the Appeal from the District Court in the above entitled Cause is to settle the question as to whether or not the following real estate in the Schedules attached to Appellant's petition in Bankruptcy, situated in Jay County, Indiana, and described as follows, to wit:

The north half of the north-west quarter of Section 4, township 23, north, of range 13 east, containing 80 acres, more or less,

was properly included therein.

[fol. 22] That prior to the decision of the Federal Supreme Court holding Subsection (s) of the Bankruptcy Act of August 28, 1935, valid, the Appellee contended that said real estate was not properly included in said Schedules and the Appellant contended that said real estate was properly included therein and that he was entitled to the benefits of said new Subsection (s) and the possession of said real estate for three years from said date.

That on December 14, 1936, said District Court ruled in favor of the Appellee and struck said real estate from said Schedules and thereby attempted to deprive him of the possession of said land and the other rights given him therein.

Appellant contends in this Appeal that since said Supreme Court held said Subsection (s) valid, that said District Court erred in striking out said real estate from said Schedules.

That prior to said Federal decision and this Appeal, said Appellee, The Union Central Life Insurance Company, commenced an action in the Jay Circuit Court of Indiana to eject the Appellant and his tenant, Walter C. Wright, from said real estate.

That Appellant contended in said State Court that the exclusive jurisdiction and control of the possession of said real estate was vested in said Court of Bankruptcy and that said State Court had no jurisdiction or control over the same, and that Appellant was entitled to possession of said real estate for three years from the passage of said new Subsection (s). That said State Court had no power to deprive him of that possession. Both of these decisions were made before the Federal Supreme Court held said new Act valid.

That the State Court declined to take Appellant's view of said Act and it rendered judgment against said Appellant

and his tenant, to the effect that they should be ejected from said real estate.

[fol. 23] That the Appellant now contends that said decisions of said District Court and said State Court were based on the theory that said Subsection (s) was unconstitutional. That said Charles Imel is the Sheriff of said Jay County, Indiana and that said Union Central Life Insurance Company is now threatening and will do so unless restrained by this Court, to have the Clerk of said Jay Circuit Court issue to said Sheriff a copy of said Judgment and that unless restrained by this Court, said Sheriff will execute said Judgment and remove the Appellant and his tenant from said real estate and deliver the possession of the same over to said Life Insurance Company.

That by virtue of said proceedings in Bankruptcy, the Appellant now contends that the exclusive jurisdiction and control over the possession of said real estate is vested in said District Court and that by virtue of this Appeal said jurisdiction and control over said land is vested in this Court of Appeals and that it has power to protect said jurisdiction over said land until this Case can be decided.

That the Appellant cannot give notice to said Insurance Company and said Sheriff of the hearing of this application for a temporary restraining order for the reason that until he could give said notice said Sheriff would have removed him and his tenant from said real estate.

Therefore there exists an emergency to issue a temporary restraining order herein, restraining said Life Insurance Company and said Sheriff until such notice can be given. That the removal of Appellant and his tenant from said real estate will greatly damage them.

Wherefore the Appellant prays the Court to issue an order, restraining said Life Insurance Company and said Sheriff from removing them from said real estate until this Appeal can be determined. That the Court order the Clerk to issue a copy of said order to said Life Insurance Com-
[fols. 24-25] pany and said Sheriff at Portland, Indiana, and a copy thereof to George L. Perry, Coroner of said County or his successor in Office to — served on said Sheriff.

James M. Wright, Debtor.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[fols. 26-27] IN UNITED STATES CIRCUIT COURT OF APPEALS

6183-6184

[Title omitted]

ORDER OVERRULING MOTION TO DISMISS, ETC.—June 11, 1937

It is ordered by the Court that the motion of appellee to dismiss these appeals, filed on June 3, 1937, be, and the same is hereby overruled, without prejudice to the right of said appellee to renew said motion at the hearing on the merits of this cause.

The appellant herein having this day presented a petition for a restraining order without notice to counsel for appellee, It is ordered by the Court that a temporary restraining order be and is hereby granted, restraining the Sheriff of Jay County, Indiana, and the appellee, Union Central Life Insurance Company, from removing the appellant in this cause and his tenant from the real estate described in said petition for a restraining order, said temporary restraining order to be in effect until said petition of appellant is finally acted upon by this Court. It is further ordered that the appellant shall forthwith serve a copy of his petition for a restraining order upon counsel for appellee, and said counsel are hereby allowed five days from this date to file suggestions in opposition to said petition.

[fol. 28] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

Appeal No. 6183-6184, Consolidated

[Title omitted]

APPELLANT'S PETITION TO RESTRAIN THE APPELLEE AND THE SHERIFF OF JAY COUNTY, INDIANA, FROM EXECUTING THE JUDGMENT OF THE STATE COURT AND REMOVING HIM AND HIS TENANT FROM THE REAL ESTATE HEREINAFTER DESCRIBED

SECOND PARAGRAPH—Filed June 14, 1937

Comes now James M. Wright, the Appellant in the above entitled Cause, and for a second paragraph of petition, respectfully represents to the Court:

That the Appeal from the District Court in the above entitled Cause is to settle the question as to whether or not the following real estate included in the Schedules attached to Appellant's petition in Bankruptcy, is properly in said proceedings, to-wit:

The north half of the north-west quarter of Section 4, township 23 north, of range 13 east, containing 80 acres, more or less, in Jay County, Indiana.

[fol. 29] That prior to the decision of the Federal Supreme Court holding Subsection (s) of the Bankruptcy Act of August 28, 1935, valid, the Appellee contended that said real estate was not properly included in said Schedules and the Appellant contended that said real estate was and that he was entitled to the benefits of said new Subsection (s) and the possession of said real estate for three years from said date.

That on December 14, 1936, said District Court ruled in favor of the Appellee and struck said real estate from said Schedules and thereby attempted to deprive him of the possession of said land and the other rights given him therein.

Appellant contends in this Appeal that since said Supreme Court held said Subsection (s) valid, that said District Court erred in striking out said real estate from said Schedules and in denying him of his rights under said new Act.

That prior to said Federal decision and this Appeal, said Appellee, The Union Central Life Insurance Company, had commenced an action in the Jay Circuit Court of Indiana to eject the Appellant and his tenant, Walter C. Wright, from said real estate.

That Appellant contended in said State Court that the exclusive jurisdiction and control of the possession of said real estate was vested in said Court of Bankruptcy and that said State Court had no jurisdiction or control over the same, and that Appellant was entitled to possession of said real estate for three years from the passage of said new Subsection (s) and that said State Court had no power to deprive him of that possession. Both of these decisions were made before the Federal Supreme Court held said new Act valid.

That the State Court declined to take Appellant's view of said Act and it rendered judgment against said Appellant

[fol. 30] and his tenant, to the effect that they should be ejected from said real estate.

That said Appellant now contends that said erroneous decisions of said District Court and said State Court were based on the theory that said Subsection (s) was unconstitutional. That said Charles Imel, is the Sheriff of said Jay County, Indiana, and that said Union Central Life Insurance Company is now threatening and will do so unless restrained by this Court, to have the Clerk of said Jay Circuit Court issue to said Sheriff a copy of said Judgment and that unless restrained by this Court, said Sheriff will execute said Judgment and remove the Appellant and his tenant from said real estate and deliver the possession of the same over to said Life Insurance Company.

That by virtue of said proceedings in Bankruptcy, the Appellant now contends that the exclusive jurisdiction and control over the possession of said real estate is vested in said District Court and that by virtue of this Appeal said jurisdiction and control over said land is vested in this Court of Appeals and that it has power to protect said jurisdiction over said land until this Case can be decided.

That inasmuch as said real estate was in the jurisdiction of said District Court and said owner had appealed from said order striking it out, the Appellant and his tenant put out the crops on said land for the present season of 1937, consisting of 10 acres of corn, 20 acres of oats, and he has also thereon 10 acres of alfalfa, 40 acres in pasture and has sown $40.00 worth of grass seed on said farm at the beginning of the present season.

That for said reason he and his tenant have an equity in said land by virtue of said growing crops. That it would be unwise and do great injury to the Appellant and his tenant and damage said mortgagee to interfere with the work [fols. 31-34] of said tenant. That he should be allowed to proceed with the care and cultivation of said crop until they are matured. That the Appellant and his tenant will render the ⅖ of said crops to said mortgagee which would be a reasonable rent therefor.

That said Appellant and his tenant cultivated said land for the year 1936 and said Appellee refused to accept its share of said crops. That they still have said mortgagee's share of crops and is ready to deliver the same to said trustee for the use of said mortgagee. That said Appellee

is amply secured by Appeal bonds approved in the Jay Circuit Court and by the District Court in the appeals herein for any damages or loss, it may suffer in the rents and profits of said real estate.

That the status in quo should be maintained as to said real estate until the Appellant's right to possession of it can be settled by this Court. That said Appellee will not be harmed by being restrained from ejecting the plaintiff until said Appeals can be decided and on the other hand it will give the Appellant his rights under said new Subsection and said decision of the Federal Supreme Court and an opportunity to finance himself and save said farm.

Wherefore the Appellant prays the Court to issue an order herein restraining said Appellee, the Union Central Life Insurance Company and said Sheriff of Jay County, Indiana, from removing him and his tenant from said land until this appeal can be heard and for all other proper relief in the premises.

Samuel E. Cook, Counsel for Appellant.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[fol. 35] In United States Circuit Court of Appeals, Seventh Circuit

Appeal Nos. 6183-6184, Consolidated

[Title omitted]

Appellee's Objections to Appellant's Petition to Restrain the Appellee and the Sheriff of Jay County, Indiana, From Executing the Judgment of the State Court and Motion of the Appellant to Dissolve the Temporary Restraining Order Heretofore Entered by This Court Without Notice to the Appellee—Filed June 16, 1937

And now comes The Union Central Life Insurance Company, a Corporation, Appellee in the above entitled cause and files this, its objections to the Appellant's petition to restrain the Appellee and the Sheriff of Jay County, Indiana from executing the judgment of the State Court in an

ejectment proceeding, and also to move this Court to vacate the temporary restraining order entered by this Court without notice to the Appellee and for reasons for said objections and grounds for the motion of the said Appellee, sets forth the following:

[fol. 36] (1) The question presented in the appeal in the above entitled cause is whether the Honorable Judge Slick of the United States District Court for the Northern District of Indiana was correct in his ruling that the Bankrupt had no such title in the real estate in question as to entitle him to schedule same in his bankruptcy schedule. The issue involved in the State Court of Indiana, the execution of whose judgment the Appellant asks this Court to restrain, was whether the ejectment suit brought by the Appellee was properly brought.

(2) The undisputed facts are that on October 1, 1925 James M. Wright, the Bankrupt, and Maggie G. Wright executed a mortgage on the farm in question to the Union Central Life Insurance Company, Appellee. On October 14, 1931 James M. Wright and Emma G. Wright, his wife, deeded the farm in question to their son, Walter C. Wright, subject to the encumbrance of Three Thousand ($3,000.00) Dollars on the farm in question, held by the Union Central Life Insurance Company, Appellee. On January 3, 1934 an action was brought to foreclose this mortgage, same being in default, and James M. Wright and Walter C. Wright were made defendants. Emma G. Wright had died and judgment of foreclosure was entered on June 9, 1934 and on July 12, 1934 this real estate was sold by the Sheriff of Jay County, Indiana to the Union Central Life Insurance Company, Appellee. Thereafter, on October 30, 1934 James M. Wright filed his petition in bankruptcy under the Frazier-Lemke Act and on April 13, 1935 Walter C. Wright and wife deeded the property in question back to James M. Wright. On August 2, 1935 the Union Central Life Insurance Company, Appellee, secured a final deed for the real estate in question and thereafter on September 13, 1935 brought an action in ejectment.

[fol. 37] (3) The Circuit Court of Jay County in the action in ejectment after due hearing found that the Union Central Life Insurance Company, Appellee, was entitled to immediate possession of the real estate and rendered a judg-

ment accordingly. From this judgment Walter C. Wright and James W. Wright appealed to the Appellate Court of Indiana and the appeal was perfected and the cause was transferred to the Supreme Court of Indiana because the Appellant claimed that a constitutional question was involved.

(4) On April 2, 1937 the Supreme Court of the State of Indiana affirmed the lower Court. (The opinion of the Supreme Court can be found in Volume 7 (2nd) April 14, 1937, page 206 Northeastern Reporter advance sheets.) A petition for rehearing was filed, brief submitted, and the petition for rehearing was denied on June 4, 1937 and the opinion of the Supreme Court of Indiana was certified back to the State Court of Indiana and spread of record. A writ of possession was then issued and the Sheriff of Jay County, Circuit Court, served same upon Walter C. Wright and James M. Wright.

(5) The Appellant contends in his petition for a restraining order that the decisions of the United States District Court for the Northern District of Indiana and the State Supreme Court of Indiana were based on the theory that said subsection (s) of the amendment to the Bankruptcy Act, being the so-called Frazier-Lemke Farm Act, was unconstitutional and that the State Supreme Court did not have before it the last decision of the United States Supreme Court concerning subsection (s) of the so-called Frazier-Lemke Farm Act.

[fol. 38] The Appellant is in error in this statement. The opinion of the Supreme Court of Indiana shows that this question and the last decision of the United States Supreme Court was raised by the Appellant and fully and definitely passed upon. The State Supreme Court of Indiana held that after issuance of the certificate of sale to the mortgagee, the Appellee in this case, who purchased the farm in question at the foreclosure sale, obtained good title of the said property subject only to right to redeem on the part of the owner of the Equity. Thereafter, the conveyance of the interests of the mortgagor, the Appellant in this case, after the issuance of the certificate of sale, conveyed to the mortgagee, the Appellee in this case, the last remaining rights of the Appellant, which was the right to redeem, which right expired one year after the date of sale.

(6) The State Supreme Court also affirmed the finding that the mortgagor was not the owner of the real estate in question at the time of the filing of his petition in bankruptcy and inasmuch as the grantor in the deed conveying the right to redeem was the mortgagor, to-wit, the Appellee in this case, and had also divested himself of his right to redeem, the petition in bankruptcy did not bring the real estate within the provisions of the so-called Frazier-Lemke Act.

(7) The United States District Court for the Northern District of Indiana after reviewing the finding of the conciliation Referee who received the evidence from the parties, confirmed the finding of said Referee and struck the real estate in question from the bankruptcy schedule by reason of the fact that at the time of the filing of the bankruptcy petition title to the real estate in question was not in the Bankrupt. We must repeat that prior to the foreclosure proceedings and long prior to the time when the [fol. 39] bankruptcy petition involved in the instant appeal was filed, the Bankrupt and his wife had deeded the farm in question to their son. This deed was recorded and Walter C. Wright and not the Bankrupt was the owner of this real estate at the time the Bankruptcy petition involved in these proceedings was filed. After the Honorable Judge Slick of the United States District Court for the Northern District of Indiana had sustained the finding of the conciliation Referee, who found that title to the real estate was not in the Bankrupt and therefore ordered said real estate in question stricken from the Bankruptcy petition, Walter C. Wright and wife deeded the real estate in question back to the Bankrupt. Thereafter, a motion was made by the Appellant to amend his bankruptcy petition to include this real estate, which motion was denied.

(8) The questions involved in these consolidated appeals affect the matter only of title. We believe also that the question of good faith presents itself. In the ejectment proceedings brought into State Court after the Appellee had acquired the Master's Certificate of Sale and after the owners of the equity of redemption had conveyed their remaining interest, which interest was only the right to redeem, and after the title to the property in question became absolute in the Appellee, did the Appellee file its ejectment proceedings in the State Court of Jay County.

We regret to repeat, but in order to stress these facts we say again that that issue of the right to the possession of the property was carried to the Appellate and State Supreme Court of Indiana.

We respectfully submit that the issue of ejectment which was fully adjudicated is not the same as the issue involved in these proceedings and hence there is no conflict in the [fols. 40-41] jurisdiction between this Court and the State Supreme Court of Indiana. The execution of the judgment of the State Supreme Court of Indiana should not be disturbed. This Court will determine the question as to whether Judge Slick of the United States District Court for the Northern District of Indiana was in error in finding that the Bankrupt did not have such title to and in the property in question as to entitle him to schedule same in his Bankruptcy Petition.

We therefore respectfully submit that the motion and petition of the Appellant to restrain the Appellee and the Sheriff of Jay County, Indiana from executing the judgment of the State Court of Indiana and removing the Bankrupt and his tenant from the real estate in question should be denied and the temporary restraining order heretofore entered by this Court be dissolved.

Respectfully submitted, Roscoe D. Wheat, Arthur P. Feigen, Albert J. Feigen, Attorneys for Appellee.

[fols. 42-43] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—June 25, 1937

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. Samuel E. Cook, counsel for appellant, and by Messrs. Roscoe D. Wheat and Arthur P. Feigen, counsel for appellee, and the Court having heard the same, takes this matter under advisement.

[fol. 44] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936, APRIL SESSION, 1937

Nos. 6183 and 6184

In the Matter of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT, Appellant,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY, Appellee

Appeals from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

Before Sparks, Major and Alschuler, Circuit Judges

OPINION—July 3, 1937

SPARKS, Circuit Judge:

These appeals involve bankruptcy proceedings under Section 75 of the Bankruptcy Act in which appellant was the debtor. The first appeal is from an order of the District Court, on December 14, 1936, overruling the debtor's petition to review the decision and recommendations of the Conciliation Commissioner and approving the latter's recommendation that certain real estate listed as assets be stricken from the debtor's schedules. The second appeal is from an order of the court, on December 31, 1936, denying the debtor's application for permission to amend his schedules by reinstating as assets therein, the real estate theretofore stricken in Cause No. 6183.

The questions presented in both cases are practically the same and they arise out of the following facts: On October 1, 1925, the debtor was the owner of 200 acres of land in Jay County, Indiana. On that date he with his wife, Emma G., executed a mortgage upon this land to appellee to secure the [fol. 45] payment of a note in the sum of $9000. On the same day the debtor was the owner of an additional tract of land in the same county containing 80.31 acres, upon which appellee held a mortgage lien to secure the payment of a note for $3000 executed by the debtor and his wife on October 1, 1925. These two tracts adjoined, constituting one farm.

On October 14, 1931, the debtor and his wife executed and delivered three separate warranty deeds to their two children and son-in-law for certain portions of the farm; that is to say,—to their son, Walter C. Wright, they deeded the 80.31 acre tract; to their daughter, Edna E. Coon, and her husband John E. Coon, they deeded separate 40 acre tracts, one to each, out of the 200 acre tract. On the same day the debtor also executed and delivered to his wife a separate warranty deed for a third 40 acre tract out of the 200 acres. The consideration named in each deed was one dollar and other consideration, the receipt of which was acknowledged. The deed to Walter C. Wright was made subject to appellee's mortgage thereon for $3000; and the deeds to Edna E. Coon, her husband and her mother, were made subject respectively to a mortgage indebtedness of $2500, $1500 and $1400 of the $9000 mortgage indebtedness to appellee; however, there was no express assumption of such indebtedness by any of the grantees. The deeds of the children and son-in-law were duly recorded on the day they were executed, and the one to the debtor's wife was duly recorded on February 25, 1932.

On January 3, 1934, appellee instituted an action in the Jay Circuit Court of Indiana, against the debtor and Walter C. Wright to foreclose the $3000 mortgage on the 80.31 acre tract. The debtor's wife was not joined in the action because in the meantime she had died. On June 9, 1934, a decree of foreclosure and order of sale was entered. On July 12, 1934, pursuant to the decree, the sheriff sold this tract to appellee and issued to it his certificate of sale therefor; and upon the expiration of the year of redemption, pursuant to the Indiana Statutes, the sheriff of Jay County issued his sheriff's deed therefor to appellee on August 2, 1935.

Prior to October 30, 1934, appellee filed its complaint in the Jay Circuit Court of Indiana, for personal judgment against James M. Wright, and for foreclosure of the $9000 mortgage, against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright, and the Citizens Bank of Portland, Indiana. That cause was venued from Jay County to Adams County, Indiana, and [fol. 46] while it was pending on October 30, 1934, the debtor filed his petition in bankruptcy, under the Frazier-Lemke Act, in which he filed under oath a schedule of his

property including therein the real estate which he had conveyed on October 14, 1931, to his wife and children and his son-in-law, amounting to 200.31 acres.

On April 13, 1935, Walter C. Wright, Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered to the debtor a quit-claim deed for the real estate which he had deeded to them, and to his wife who was then deceased.

On May 27, 1935, appellee recovered a personal judgment against the debtor in the Adams Circuit Court for $11,975.11 and a decree of foreclosure of its $9000 mortgage which covered the 200 acre tract, 120 acres of which had been conveyed by three of the four deeds hereinbefore referred to. Pursuant to that decree, on July 20, 1935, the Sheriff of Jay County, in compliance with the applicable laws of Indiana, sold the fee simple of that real estate to appellee for $12,174.31, that being the highest and best bid received, and executed and delivered to it a certificate of sale. No one having redeemed the property within the year of redemption, the Sheriff of Jay County, upon presentation of the certificate by appellee on July 20, 1936, executed and delivered his sheriff's deed to appellee for the 200 acres described in the certificate.

On September 13, 1935, appellee instituted an action in the Jay Circuit Court, against Walter C. Wright and his wife Virgie M. Wright, for possession of the 80.31 acres. The debtor by leave of court was admitted as a party defendant, and answered that he had been duly declared a bankrupt in the Federal Court and that the State Court, for that reason, was without jurisdiction. Judgment for possession and damages went for appellee, whereupon appellants appealed to the Supreme Court of Indiana, and the judgment was affirmed April 2, 1937. See Wright, et al. v. Union Central Life Insurance Co., 7 N. E. (2d) 206. On October 11, 1935, the debtor filed an amended petition in bankruptcy under the provisions of Section 75 (s) as amended August 28, 1935.

Both records in the appeals to this court were filed February 20, 1937. The cases were consolidated for hearing, and on June 3, 1937, appellee filed its motion and petition to dismiss the consolidated appeals. On June 11, 1937, appellant filed his verified petition for a temporary order

without notice, restraining appellee, until notice could be [fol. 47] given, and for a permanent order upon hearing, from enforcing the judgment which the Indiana Supreme Court had affirmed, for possession of the 80.31 acre tract. This court issued the order and continued it until June 25, and notified both parties that both appeals would be heard on their merits at that time, and that also all pending petitions and motions would be then heard.

On June 14, 1937, appellant filed his second paragraph of petition for a restraining order, and the merits and motions were submitted and presented on the appointed day.

All questions here presented by appellant are based upon subsection (s) of Section 75, as amended by the new Frazier-Lemke Act, August 28, 1935, 11 U. S. C. A. section 203 (s).

Aside from this enactment it is obvious that the debtor had no interest in 200.31 of the 280.31 acres of the mortgaged property at the time he filed his original bankruptcy petition on October 30, 1934, for he had deeded it to his wife, children and son-in-law more than three years before, and he did not again receive a deed for it until six months thereafter, which was nine months after the sheriff had sold the 80.31 acre tract, and within a very short time prior to the sale of the 200 acre tract under the foreclosure decree. At the time the debtor filed his amended petition for relief under the amended Act of August 28, 1935, appellee had received a deed from the sheriff for the 80.31 acre tract on August 2, 1935, and he held a sheriff's certificate of sale for the 200 acre tract, and under the Indiana law would have been entitled to a deed therefor on July 20, 1936, if there were no redemption. Hence, at the time of the enactment on August 28, 1935, the only interest that debtor had in the mortgaged property was a right to redeem the 200 acre tract, provided he did so on or before July 20, 1936. Indeed, that was all the interest he had when he filed his amended petition on October 11, 1935, unless the amendment of August 28, 1935, operated to extend his right of redemption.

It is contended by appellant that the amendment did so operate, not only to extend the time for redemption of the 200 acre tract, but also to void the deed for the 80.31 acre tract, and to extend the time for redemption of it.

In Lafeyette Life Insurance Company v. Lowmon, 79 F. (2d) 887, we held that Congress had no power to extend the time for the redemption of land sold under execution, after that time had begun to run, that is to say after the sheriff's

[fol. 48] sale. That case did not involve the right of Congress, under its bankruptcy powers, to defer the foreclosure of a mortgage, or even a sale after a foreclosure, and those questions were not decided in that case. There the sale had been had and we thought, under the laws of Indiana, which are rules of property in that State, that at the time Lowmon filed her petition in bankruptcy under Section 75, the only interest she had in the property was her right to redeem. We did not question the right of the Bankruptcy Court to administer upon that right of redemption, but we thought that the Bankruptcy Court had no right, and that Congress had no power to bestow upon it such right, to enlarge the debtor's estate, which had been limited by the foreclosure and sale in compliance with the laws of Indiana. Certiorari was not sought in that case.

Confusion has arisen in this Circuit, however, with respect to the extent of the decision of the Supreme Court in Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, announced March 29, 1937. It is contended by appellant that that case, in effect, overruled the Lowmon case and sustained subsection (s) of Section 75 as to all of its provisions. We disclaim any intention of not strictly following the rulings of the Supreme Court, but we can not accept appellant's interpretation of the extent of that decision. We do not understand that the question in the Lowmon case was before the Supreme Court in the Wright case. In the latter case there had been no sale and the period of redemption had not begun. In the Lowmon case there had been a sale and the period of redemption was running, in fact it expired two weeks after the petition was filed. Appellant's contention is based first upon the first paragraph of the Wright decision in which the Lowmon case is referred to. After stating that the question for decision was whether Section 75, subsection (s) as amended, was constitutional the Court said: "In this case, the federal court for western Virginia (see In re Sherman, 12 Fed. Supp. 297) and the Circuit Court of Appeals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. Lafayette Life Insurance Co. v. Lowmon, 79 F. (2d) 887 (Seventh Circuit); United States National Bank of Omaha v. Pamp, 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. Dallas Joint Stock Land Bank v. Davis, 83 F. (2d) 322. Because of this conflict and the importance of the question, we

granted certiorari." In no other part of the opinion are these cases referred to.

[fol. 49] We interpret this paragraph as being merely a basis for granting certiorari. It is true that we suffer considerable embarrassment from the fact that in the Wright case the court refers to the Lowmon case as being a decision like unto those of the Circuit Courts of Appeals in the Fourth and Eighth Circuits, and the District Court of the Fourth Circuit, and contrary to the one in the Fifth Circuit. We had thought that the question decided in the Lowmon case was not the same as that decided in the other cases referred to. In the Lowmon case the sale had been made and the period of redemption was running. In all other cases cited, and in the Wright case, the sales had not been made and they were still dealing with remedies for the protection of the title to property against foreclosure or sale, while that title was yet in the debtor. There was a sale in the Pamp case, but it had not been confirmed, and from the opinion we assume that was required under the laws of Nebraska. Under the Indiana laws, however, no confirmation by the court of a sheriff's sale or deed for land sold under execution is required. In the Lowmon case and in this case the court was not dealing with remedies against foreclosure and sale, but with property rights which came into existence when the sales were made by virtue of the laws of Indiana. The notes and mortgages were not in existence; they were merged into the decree of foreclosure and were cancelled.

In the Lowmon case we particularly discussed subsection (n) of Section 75, and held it unconstitutional to the extent that it authorized an extension of the period of redemption. We also referred to the first sentence in subsection (s) (2) of Section 75 which in effect commands the court to carry out that authorization by extending the time of redemption for a period of three years, and we held that portion of it unconstitutional. In this sense our decision was like those referred to in the Fourth and Eighth Circuits, and unlike the one in the Fifth Circuit, for we held a portion of subsection (s) unconstitutional. The Supreme Court in the Wright case did not say, unless by remote inference, that the facts in all the cases referred to were analogous, or that the questions presented were the same. Indeed they were not the same.

We base these conclusions upon the ruling in Chicago Board of Trade v. Johnson, 264 U. S. 1, where the court said: "* * * where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts * * *" and [fol. 50] and also upon Home Bldg. and Loan Assn. v. Blaisdell, 290 U. S. 398, where it was said: "* * * Although the courts would have no authority to alter a statutory period of redemption, the (Minnesota) legislation in question permits the courts to extend that period, within limits and upon equitable terms * * *" True, these decisions were prior to the enactment of amended subsections (n) and (s) of Section 75, but we think that makes no difference. If the extension of the time of redemption must be considered as a remedial right instead of a fixed property right, then the bankruptcy court under its broad equitable powers would perhaps have the inherent power to extend the time without permissive Federal legislation. In the Blaisdell case it was said that the courts had no authority to alter a statutory period of redemption, and the court based its decision on the permissive amendment of the Minnesota legislation. Hence we concluded that the right to extend the time of redemption was not considered of a remedial character, but was regarded as a property right to be governed by the state law under the ruling of the Board of Trade case, supra.

These late expressions of the Supreme Court lead us to believe that it did not intend to declare a different doctrine in the Wright case, especially since that question was not then before it. The question presented is of such importance that we feel it our duty to adhere to the ruling in the Lowman case unless and until the Supreme Court shall hereafter hold to the contrary upon that issue.

It seems to us that if Congress has the power under the constitution to prolong or in any way limit the time of redemption as fixed by the laws of Indiana, for the purpose of increasing the estate of the debtor, or increasing his rights in property to which he has no title, or for any other purpose, then it would have the same right for the same purpose to alter the laws of descent of that state, or to permit federal construction of her transfer statutes contrary to the views of her own courts. We have never thought that such power was contemplated by the federal constitution, even under its broadest construction.

Appellant urges that the effect of the decision in the Wright case upholds each and every provision of subsection (s). We think it upholds only those portions which were pertinent to the questions raised in that case, which did not include the right of the bankruptcy court to extend the time for redemption after that period had begun to run. [fols. 51-52] From what has been said we overrule appellee's petition to dismiss the consolidated appeals, and the restraining order is dissolved. There was no error in striking from appellant's schedule of assets the real estate here involved in cause No. 6183, nor was there error in denying appellant's motion to reinstate that real estate in his schedule of assets in cause No. 6184.

Decrees
Affirmed.

A true Copy. Teste:
——, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 53] In United States Circuit Court of Appeals

6183

In the Matter of James M. Wright, Debtor

James M. Wright

vs.

Union Central Life Insurance Company

Appeal from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

Judgment—July 3, 1937

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from, be, and the same is hereby affirmed with costs.

It is further ordered that the petition to dismiss this appeal be, and the same is hereby denied, and that the

restraining order heretofore entered in this cause be, and the same is hereby dissolved.

IN UNITED STATES CIRCUIT COURT OF APPEALS

6184

In the Matter of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

Appeal from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

JUDGMENT—July 3, 1937

[fol. 54] This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from, be, and the same is hereby affirmed with costs.

It is further ordered that the petition to dismiss this appeal be, and the same is hereby denied, and that the restraining order heretofore entered in this caus be, and the same is hereby dissolved.

[fols. 55-75] Petition for rehearing covering 14 pages, filed July 22, 1937, omitted from this print. It was denied, and nothing more by order of September 20, 1937.

[fol. 76] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—September 20, 1937

It is ordered by the Court that the petition of appellant for oral argument on the petition for rehearing in this cause, be, and it is hereby denied.

It is further ordered that the petition for rehearing be, and the same is hereby denied.

[fols. 77-79] In United States Circuit Court of Appeals

[Title omitted]

Order Staying Mandates—September 28, 1937

Now this day comes counsel for appellant and presents a motion for stay of the Mandates of this Court pending a petition to the Supreme Court of the United States for a Writ of Certiorari.

On Consideration Whereof: It is now here ordered that the Mandates in these causes be, and the same are hereby stayed until the further order of this Court.

It is further ordered that counsel for appellant proceed with diligence and promptly file petition for a Writ of Certiorari in the Supreme Court of the United States, and forthwith file in this Court proof of the filing of said petition in said Court.

[fol. 79a] In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 6183-4 Consolidated

[Title omitted]

Notice as to Transcript in Cause No. 6183

To Feigen and Feigen, Counsel for Appellee in Said Cause:

Please take notice that on the 22 day of November, 1937, the Appellant filed in the Office of the Clerk of said Circuit Court of Appeals a petition for an order of said Court to certify and transmit the original typewritten transcript in No. 6183 to the Clerk of the Supreme Court to be printed as part of the record in said Cause.

That Appellant will ask said Court to hear said petition on the 29 day of November, 1937, or as soon thereafter as is convenient for said Court.

Dated this 22nd day of November, 1937.

Samuel E. Cook, Counsel for Appellant.

[fol. 80] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 6183-6184

[Title omitted]

NOTICE OF PRÆCIPE FOR RECORD

To Arthur P. Feigen and Albert J. Feigen, 111 W. Washington Street, Chicago, Illinois, Counsel for the Appellee, Union Central Life Insurance Company, Appellee, in Said Cause:

Please take Notice that on the 22 day of November, 1937, the Appellant in the above Cause filed with the Clerk of said Circuit Court of Appeals a præcipe for the record to be certified and transmitted to the Clerk of the Supreme Court of the United States on the petition for a Writ of Certiorari to said Court of Appeals in said Cause.

Dated this 22 day of November, 1937.

Samuel E. Cook, Counsel for Appellant.

[fol. 81] STATE OF INDIANA,
County of Huntington, ss:

Proof of Service of Notice

Samuel E. Cook, being duly sworn on his oath, says: That he is Counsel for the Appellant in the above Cause and that on the 20 day of November, 1937, he mailed 1 copy of the above notice of the filing of said præcipe and 3 copies of said præcipe to Arthur P. Feigen and Albert J. Feigen, 111 E. Washington Street, Chicago, Illinois, Counsel of record for Appellee in said Cause by depositing it in the United States Post Office in the City of Huntington, Indiana, with the required postage thereon.

Samuel E. Cook.

Subscribed and sworn to before me this 20 day of November, 1937. Homer E. Bailey, Notary Public. My Commission expires May 29, 1938. (Seal.)

[fol. 82] Original

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 6183-6184

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed November 23, 1937

Appeal to the Supreme Court of the United States from the Decree and Judgment of the United States Circuit Court of Appeals for the Seventh Circuit, by Petition for Writ of Certiorari

To Frederick G. Campbell, Esquire, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please make out, certify and transmit to the Clerk of the Supreme Court of the United States the following portions of the record and proceedings in said Court to be incorporated into the transcript of the record *of* be used on said appeal, and petition for said writ to-wit:

1. One copy of the printed transcript of the record of the proceedings of the District Court, in said cause of James M. Wright Debtor vs. Union Central Life Insurance Company No. 6184.

2. Ten uncertified copies of said printed record in said cause.

3. The original type-written transcript of the proceedings of the District Court in Cause No. 6183 as ordered by said Circuit Court.

4. And attach to said printed transcript a certified manu- [fols. 83-85] script copy of the proceedings in the United States Circuit Court of Appeals of said Circuit, namely:

(1) The order docketing the transcripts in No-. 6183 and 6184 as causes in said Circuit Court of Appeals.

(2) The order consolidating No. 6183 and No. 6184 in said Court.

(3) The order of submission of said Causes in said Court.

(4) The opinion of the Court in said Causes.

(5) The final order and decree of the Court in said Causes.

(6) The Appellant's petition for a rehearing in said Causes (in full) and the order of the Court denying said petition.

(7) The order of the Court staying the mandate in said Causes.

5. Also certify that in the papers, briefs and proceedings in said Causes No-. 6183 and 6184, it appears that Samuel E. Cook of Huntington, Indiana, appeared as Counsel for said Appellant, James M. Wright, and that Arthur P. Feigen and Albert J. Feigen, of Chicago, Illinois, and Roscoe D. Wheat of Portland, Indiana, appeared as Counsel for the Appellee, Union Central Life Insurance Company.

6. A copy of this præcipe.

7. Add (1) the certificate of said Clerk to said printed transcript of the record in No. 6184. (2). A certificate to said manuscript copy of the proceedings in said Circuit Court in said Causes and (3) A certificate to said original typewritten transcript in said Cause No. 6183.

To be used as the basis for a petition to the Supreme Court of the United States for a Writ of Certiorari to said Circuit Court of Appeals in said Causes.

Respectfully submitted, Samuel E. Cook, Counsel for Appellant.

[fol. 86] In United States Circuit Court of Appeals for the Seventh Circuit.

No. 6183-6184

[Title omitted]

ADDITIONAL PRÆCIPE FOR TRANSCRIPT OF RECORD, REQUESTED BY APPELLEE—Filed November 30, 1937

To Frederick G. Campbell, Esquire, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please include in the transcript of record the following additional portions of the record and proceedings in this

Court, to be used on the petition for Writ of Certiorari, to-wit:

1. Appellant's petition to restrain the appellee and the Sheriff of Jay County, Indiana, from executing the judgment of the State Court and from removing the appellant and his tenant from that portion of the real estate described in the appellant's petition.

[fols. 87-88] 2. Additional second paragraph of said petition, filed by the appellant in connection with said motion.

3. Appellee's objections to appellant's petition to restrain the appellee and the Sheriff of Jay County, Indiana, from executing the judgment of the State Court and motion of the appellee to dissolve the temporary restraining order heretofore entered by the United States Circuit Court of Appeals, for the Seventh Circuit, without notice to the appellee.

4. Petition of appellant to print transcript only in cause #6184.

5. Objections of appellee to the printing of transcript only in cause #6184.

6. Court ruling on said petition and objections thereto.

7. Petition and motion of appellee for leave to refer to the Transcript of Record in cause #6183 in its Brief and Argument and also to direct the Clerk to print this Petition and Court's order with reference thereto, and to attach same to the printed Transcript of Record in cause #6184.

8. Court's order on said Petition and Motion.

Respectfully submitted, Arthur P. Feigen, Albert J. Feigen, Roscoe D. Wheat, Counsel for Appellee.

[fol. 89] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CLERK'S CERTIFICATE

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby

certify that the foregoing typewritten pages, numbered from 1 to 88 inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Appellant's Præcipe, filed on the twenty-third day of November, 1937, and the Appellee's Præcipe, filed on the thirtieth day of November, 1937, excepting as to the following items in Appellant's Præcipe:

Item 1.—The printed record called for is not included in the foregoing proceedings, but is certified herewith under a separate Certificate.

Item 2—Ten Copies of the printed record are not included in the foregoing proceedings, but said copies have been furnished counsel for appellant.

Item 3—The typewritten transcript of the record in cause No. 6183 as certified to by the Clerk of the District Court, is not included in the foregoing proceedings, as it is certified herewith under a separate Certificate and is being transmitted to the Supreme Court pursuant to an order of this Court.

Item 4—Sec. 1—There is no order of record that causes Number- 6183 and 6184 be docketed in this Court. A recital of the docketing of these causes is contained in the foregoing proceedings.

Item 5—Samuel E. Cook filed no formal appearance in these causes but he is the attorney who represented the appellant in this Court throughout all of the proceedings. Arthur P. Feigen, Albert J. Feigen and Roscoe D. Wheat, entered appearances as counsel for appellee on Feb. 27, 1937, and represented the appellee in this Court throughout all the proceedings:

In the Matter of: James M. Wright, Debtor, 6183, James M. Wright, Appellant, vs. Union Central Life Insurance Company, Appellee, in the cases of: 6184, James M. Wright vs. Union Central Life Insurance Company, October Term, 1937, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof: I hereunto subscribe my name and affix the seal of said United States Circuit Court of

Appeals for the Seventh Circuit, at the City of Chicago, this eighth day of December, 1937.

Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal United States Circuit Court of Appeals, Seventh Circuit.)

[fol. 90] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR A WRIT OF CERTIORARI

On consideration of the motion of counsel for petitioner in the above entitled cause, and good cause therefor having been shown,

It Is Ordered that the time within which petition for a writ of certiorari may be filed herein be, and the same is hereby, extended for a period of 30 days from December 20, 1937.

Charles E. Hughes, Chief Justice of the United States.
Dated this 14th day of December, 1937.

[fol. 91] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 715

ORDER ALLOWING CERTIORARI—Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 92] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 716

ORDER ALLOWING CERTIORARI—Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

No. _____

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

MOTION FOR LEAVE TO FILE AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, OF THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

WALTER L. CLEMENTS,
South Bend, Indiana;

ELMER McCLAIN,
Lima, Ohio;

LUTHER B. BRATTON,
Kankakee, Illinois;

RAY M. FOREMAN,
Danville, Illinois;

IRA J. COVEY,
Peoria, Illinois;

HOMER E. BAILEY,
Huntington, Indiana,
Of Counsel.

SAMUEL E. COOK,
Huntington, Indiana.

WM. LEMKE,
Fargo N. Dakota,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

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IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, OF THE SEVENTH CIRCUIT.

To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the petitioner James M. Wright by his counsel and respectfully moves said Honorable Court to grant him leave to file and present to this court the petition hereinafter set out for a Writ of Certiorari in said cause addressed to the United States Circuit Court of Appeals for the Seventh Circuit.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana,
Member of the Bar of the
Supreme Court.

WM. LEMKE,
Fargo, N. Dakota,
Counsel for said James M. Wright.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

No. _____

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, OF THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, James M. Wright, a citizen of the United States and a resident of the County of Jay, in the State of Indiana, respectfully shows: That he is aggrieved by a judgment and order of the Honorable United States Circuit Court of Appeals for the Seventh Circuit entered on the 20th day of September, 1937. (R. (6183-84) p. 76) (opinion R. p. 44-51

inclusive) affirming an order of the District Court of the United States for the Northern District of Indiana (Fort Wayne Division) and declaring unconstitutional amended Subsection (s) of Section 75 of the Bankruptcy Act of the Congress of the United States, as amended by the Act of Congress, August 28th, 1935 (Chap. 792, Sec. 6, 49 Stat. U.S. 942) (Title 11 U.S.C.A. 203, designated in the Courts as the Amended Frazier-Lemke Moratorium Act), and denied the petitioner (an insolvent farmer) of the right to an extension of the period of redemption provided in said amended subsection in which to redeem his land and refinance himself from a sale thereof under a decree of foreclosure of the respondent's mortgage. Reported 91 F. (2nd) 894.

Your petitioner files and presents this, his petition for the issuance of a writ of certiorari to review said order and proceedings had in said United States Court of Appeals of said Seventh Circuit in said case.

The petitioner herein files herewith a certified transcript of the record and proceedings in said Court and the Court has ordered the original transcript in No. 6183 forwarded to the Clerk of this Court, together with a supporting brief as required by the Rules of this Honorable Court.

I.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.

The material matters leading up to the decision of the Circuit Court of Appeals are in substance as follows:

(1). The petitioner was an insolvent farmer who filed his petition under Section 75 of the Bankruptcy Act and amended it under Amended Sub-section (s) of August 28, 1935, in the District Court of the United States for the Northern District of Indiana (Fort Wayne Division) on October 29, 1934 (R. 6184-8).

(2). On petition of the respondent the Referee struck out certain real estate from his schedules. The petition to review this action was denied by the District Court. This is the first case. In the second, the District Court denied the petition to amend schedules A-2 and B-1. (R. 6184-9 opinion 44).

(3). From these orders of the District Court the petitioner appealed to the Circuit Court of Appeals of the Seventh Circuit (R. 6184-13-14) (R. opinion 44) (R. 6183-4-1) on assignment of errors duly filed. (R. 6184-11-12-13).

(4). The Circuit Court of Appeals consolidated the two cases under Nos. 6183-6184 (R. opinion 46) and in its opinion stated that both presented practically the same question. (R. opinion 44).

(5). The record was printed in 6184 and heard on the transcript in 6183. Hence, we will only refer to the printed record in 6184 hereafter.

(6). After several pages of discussion the Court in its opinion finally reached the conclusion that on August 28, 1935, he had an interest in the land—i.e. the right to redeem from the sheriff's sale and that on October 11, 1935, when he filed his amended petition under subsection (s) he still had the right to redeem, but that it would end on July 20, 1936 (one year from the date of the sale) unless said amend-

ment of August 28, 1935, operated to extend his right of redemption. (R. 6184 opinion 44).

(7). The Honorable Circuit Court of Appeals did not apply and follow the decision of the Supreme Court in the Wright case (March 29, 1937, 81 L. Ed. Adv. opinions 487) in said case but held that Congress had no power to extend the time of redemption and that said subsection (s) was unconstitutional and affirmed the decision and orders of said District Court in an opinion (set forth in full in R. 6184, pages 44 to 51 inclusive), and entered its final order therein on September 20, 1937. (R. 6183-4-76).

(8). That the petitioner filed his original petition in Bankruptcy under Section 75 of the National Bankruptcy Act as to the 200 acres on October 29th or 30th, 1934. (R. 6184-2-8). His rights under the then existing Bankruptcy Act and its amendments vested on said date.

That afterwards on July 20, 1935, the 200 acre tract was sold at Sheriff's sale and the statutory year of redemption began to run on said date. (R. opinion 47).

Thus it appears his original petition as to the 200 acres was filed nine months before the year of redemption began to run.

That this makes the facts in the case at Bar as to the 200 acre tract exactly like the facts in Wright vs. Mountain Trust Bank, (81 L. Ed. 487, March 29, 1937) in which this Court held said Subsection (s) valid.

That it will not be disputed but that the 80.31 tract was included in said petition and that it was sold at Sheriff's sale and the year began to run before said

petition was filed. That is, it was filed during said year. (R. 6184-4-6).

That the Court of Appeals should have applied the law as laid down by this Court in said Wright Case and held said Subsection (s) valid as to the 200 acre tract and reversed the decision of the District Court. The Court should have also applied said decision of this Court to said 80.31 acres and held Subsection (s) valid as to it.

II.

REASONS RELIED ON FOR GRANTING THE WRIT OF CERTIORARI.

(A). That on March 29, 1937, this Court in the case of Robert Page Wright vs. Vinton Branch of the Mountain Trust Bank of Roanoke, Va. (81 L. Ed. Adv. opinions 487) in passing on the constitutionality of amended Subsection (s) of Section 75 of the Federal Bankruptcy Act of the Congress of the United States (Frazier-Lemke Act) enacted August 28, 1935 (11 U.S.C.A. Sec. 203) held said amended subsection (s) constitutional and valid and that it extended the ordinary statutory period of redemption allowed in the States in the foreclosure of mortgages for the period of three years from said date, while on the other hand on July 3, 1937, the United States Circuit Court of Appeals for the 7th Circuit announced an opinion and afterwards a final order therein in the case of Fred J. Reardanz vs. The Connecticut Mutual Life Insurance Company of Hartford, Connecticut et al 91 Fed. (2nd) 410 in passing on the same subsection in said cause held that it was unconstitutional and that it did not extend said period of

redemption as provided therein and denied the insolvent farmer of the benefits of said remedial Act.

That on July 3, 1937, said Circuit Court of Appeals also in the case of James M. Wright (the case at Bar) pending in said Court 91 Fed. (2nd) 894 in passing on the same subsection in said cause held that it was unconstitutional and did not extend the period of redemption as provided therein and denied said farmer of the benefits of said remedial Act. That the final order and judgment was entered in said cause on September 20, 1937.

(B). That this has brought about a conflict and confusion in the decisions as to the proper construction of said subsection between said Federal Supreme Court and said Circuit Court of Appeals, which should be removed and uniformity promptly established.

(C). That this is not all. In the case of Dallas Joint Stock Land Bank vs. Davis (83 F. 2nd) 322 the United States Circuit Court of Appeals for the Fifth Circuit decided on May 5, 1936, subsection (s) of Section 75 of the National Bankruptcy Act was declared constitutional; while in the case of United etc. vs. Pamp, United States Circuit Court of Appeals for the Eighth Circuit, 83 F. (2nd) 493, decided May 11, 1936, and in the case of Lafayette Life Insurance Company vs. Lowmon, Circuit Court of Appeals for the Seventh Circuit, 79 F. (2nd) 887 the same act was declared unconstitutional.

That as he is informed there are a number of other like cases pending and undecided in the United States Circuit Court of Appeals, Seventh Circuit and other Circuits and various District Courts: That the

failure of the Circuit Court of Appeals of said seventh circuit to follow the decision of the Federal Supreme Court throws the meaning of this subsection into confusion and calls for an authoritive expression of the Federal Supreme Court on the validity of and proper construction of this amended Subsection (s).

(D). Further the petitioner is advised that said decisions against the constitutionality of said amended subsection (s) of Section 75 of the Federal Bankruptcy Act are untenable and without any foundation in law and are in direct conflict with the decision of the Supreme Court of the United States, in said (Va.) Wright case and are in conflict with the intention of Congress in the enactment of this moratorium Act; that all of said decisions of said inferior Courts holding said subsection (s) void constitute decisions of an important question of the Federal Bankruptcy law which affects many thousands of cases of insolvent farmers. That the Federal Supreme Court in said (Va.) Wright case held: "This legislation (Subsection (s)) is designed to aid victims of the general economic depression."

81 L. Ed. Adv. Op. 487 (495).

That said decisions holding said subsection (s) unconstitutional are defeating the intent of Congress and overthrowing the decision of this Court in the (Va.) Wright case and depriving thousands of farmers and their families of their homes and the savings of a lifetime.

(E). That aside from all other considerations above stated, property rights and farm lands in the basic industry of the Country, running into vast

sums of money, affecting with uncertainty and with suspense both creditor and debtor and arising in every part of the agricultural sections of the whole Country are involved in the administration of this remedial Act and that the necessity for one uniform statement of the law from this Court is an urgent economic necessity. That Appellant will lose his Home if said decision of the Supreme Court is not upheld by said Circuit Court of Appeals.

(F). That besides this, the Supreme Court in said (Va.) Wright case (81 L. Ed. Adv. opinion 487) in holding said Subsection (s) valid overruled said Circuit Court of Appeals of the Seventh Circuit in the case of LaFayette Life Insurance Company vs. Lowmon, 79 F. (2nd) 887 in which it held said Subsection (s) void. That the action of said Circuit Court of Appeals in the Wright case (case at Bar) in failing to follow the decision of the Federal Supreme Court in said (Va.) Wright case in the instant case and adhering to said Lowmon case has brought about untold conflict among the Federal decisions and confusion in the decisions in many of the District Courts and Circuit Courts of Appeals in the whole country and said action of said Circuit Court of Appeals of the Seventh Circuit calls for an authoritative and elucidating decision from the Supreme Court to remove said conflict and confusion and to clarify the construction of said Subsection (s) and for the exercise of its Supreme power of supervision in our Judicial system.

Wherefore, your petitioner prays that a writ of certiorari be issued under the seal of this Court in

this case, directed to the Honorable Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify and transmit to this Honorable Court, in manner and form as provided by law, a complete transcript of the record and proceedings in said Cirucit Court of Appeals had in cause Nos. 6183-4 entitled: In the matter of James M. Wright, Debtor, James M. Wright, Appellant, vs. Union Central Life Insurance Company, Appellee, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Laws and Rules of the United States. And that said order and judgment of said Circuit Court of Appeals be in all things reversed by this Court and for all such other relief as he may be entitled to as to this Court may seem proper in the premises.

Respectfully submitted,

Dated this 29th
day of December,
1937.

James M. Wright per

SAMUEL E. COOK,
Huntington, Indiana,
Member of the Bar of the
Federal Supreme Court.

WM. LEMKE,
Fargo, N. Dakota,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

No. _____

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE CIRCUIT COURT OF APPEALS.

The opinion of the Court is set out in the record pages 44 to 51 inclusive and reported in 91 Fed. (2nd) 894. In substance it held that the petitioner at the time of filing his petition under Section 75 of the Bankruptcy Act and when he amended his petition under Subsection (s) of said Section 75, had

the right to redeem from the Sheriff's sale, thus holding that he and his land were brought within the jurisdiction of the Bankruptcy Court. That his right to redeem expired July 20, 1936. That Congress had no power to extend the period of redemption and that Subsection (s) was therefore unconstitutional and refused to grant him the benefits provided in said Subsection and affirmed the order and judgment of the District Court which refused to allow his land to be placed back in the schedules and refused to allow him to amend the same. (R. 6184-45-47-48). In other words that the law of Indiana was superior to and restricted the powers of Congress over the subject of bankruptcies.

II.

JURISDICTION OF THIS COURT.

(1). The final order overruling the petition for rehearing was entered September 20, 1937.

The three months time to file a petition for a writ does not begin to run until the petition for rehearing is ruled upon—making the opinion or decision final.

6 Cyc. Fed. Proc. Sec. 2751, p. 170.
Morse vs. United States 70 L. Ed. 518-20.
Chicago, etc. vs. Basham 63 L. Ed. 534-5.

(2). A review on writ of certiorari is a matter of sound judicial discretion and will be granted only where there are special reasons therefor. Rules 38 Supreme Court, Subdivision 5 (b). The following cases are named: "(b) Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; . . . . or has decided an important ques-

tion of general law in a way probably untenable or in conflict with the weight of authority; or has decided a Federal question in a way probably in conflict with applicable decisions of this (Supreme Court) or has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision. (To make the laws of Congress Supreme and one harmonious whole).

Rule 38 Supreme Court (5) (b) p. 31-32 (June 5, 1928).

(3). The District Court had refused to review the order of the Referee striking the petitioner's real estate from the schedules and approved the same. (R. 6183, p.....).

That Court denied him the right to amend his schedules and reinstate his real estate. (R. 6184-9) (R. opinion 44).

The Circuit Court of Appeals in its opinion found the petitioner's appeal and real estate was properly before that Court and found that at the time of the enactment of subsection (s) he had an interest in the land i.e. the right to redeem; that he had this right on August 28, 1935, and on October 11, 1935, when he amended his petition under this Subsection (s); that his right expired at the end of the statutory year under the Indiana law (R. 6184-47).

That the State law controlled and Congress had no power to extend the period of redemption and that Subsection (s) was null and void (R. 6184-47-48). That the Court refused to apply the ruling of this Court (as to said 200 acre tract) in Wright vs.

Vinton Branch of Mountain Trust Bank of Roanoke (March 29, 1937—81 L. Ed. Adv. Opinions 487). That instead of following said decision of this Court as to said 200 acre tract it based its opinion in the case at Bar on the erroneous decision in LaFayette Life Insurance Company vs. Lowmon, 79 F. (2nd) 887. Hence, one of grave errors of the Court of Appeals was in applying its decision which had been overruled instead of the decision of this Court in the above case and in effect holding that this Act of Congress was void because it conflicted with the law of Indiana. The doctrine of the latter case had been rejected by this Court in the (Va.) Wright case. That this Court in holding Subsection (s) valid had rejected the doctrine of the Lowmon case and overruled it. This Court in Wright vs. Mountain Trust Bank, supra, 81, L. Ed. 487, p. 488 mentions the Lowmon case and had to overrule it to remove the conflict and harmonize the decisions on this Subsection (s). This has brought about such a conflict and confusion of authority on this important question as to bring the matter within the language of Rule 38 (5) (b) set out above and bring the matter within the jurisdiction of this Court to have the record in this case brought up to this Court for review to the end that said conflict and confusion be removed and that the inferior Federal Courts will know what construction to place upon said Subsection (s) and that the many distressed farmers will know what their rights are and said condition loudly calls for an exercise of this Court's power of supervision—Its supreme power over all other Federal Courts to declare the laws of

Congress supreme (when within its sphere) and to remove conflict and establish uniformity.

(4).. The Rule which sustains the jurisdiction of this Court has been set out above. (Rule 38 (5) (b). That rule gives this Court power to grant certiorari in the case at Bar to bring the record of the Circuit Court of Appeals before this Court for revision and to remove the conflict which this decision in the case at Bar has brought about. The decision in Wright vs. Mountain Trust Bank (81 L. Ed. 487) shows the case at Bar comes within the jurisdiction of this Court for review and supervision.

III.
STATEMENT OF THE CASE.

This has already been done in the preceding petition under head I, Paragraphs (1) (2) (3) (4) (5) (6) (7) and (8), PP. 3, 4 and 5.

IV.
SPECIFICATION OF ERRORS

The assignment of errors which was a part of the appeal from the District Court to the Circuit Court of Appeals and which brought said errors before the latter are set out in the printed record in No. 6184, pp. 11, 12 and 13. That among these are the following: "4. That said Court (District) Court erred in holding that the Debtor was not entitled to the benefits of the provisions of the amended Subsection (s) of Section 75 of the Bankruptcy Act of August 28, 1935." "5. That the Court erred in depriving the Debtor of the benefits and relief granted in said amended Subsection (s) of August 28, 1935."

The petitioner intends to urge and present said errors 4 and 5 in this Court and any other plain errors of said Honorable Court of Appeals.

In addition to the above the action of the Honorable Court of Appeals in making the decision in the case at Bar and the Reardanz case in conflict with the decision of this Court in Wright vs. Mountain Trust Bank 81 L. Ed. 487 and other decisions and its refusal to follow the latter decision in the case at Bar as to the 200 acre tract and in adhering to the erroneous doctrine of the Lowmon case (which had been overruled by this Court) in deciding the case at Bar and holding Subsection (s) void and in affirming the erroneous decisions of the District Court are an assignment of the plain errors of said Circuit Court of Appeals in this Court and bring said errors before this Court for consideration (Rule 38 Sup. Court (5) (b). That the petitioner will also urge and present the error of the Court in not applying the ruling in the (Va.) Wright case to said 80.31 acre tract.

V.

THE ARGUMENT.

(1). Summary of Argument, points and authorities, (as to the 200 acre tract).

Point (a). The petition in bankruptcy as to the 200 acre tract was filed in the District Court as shown above on October 29th or 30th, 1934. The facts as to said tract are exactly like the facts in the decision of this Court in the (Va.) Wright case on March 29, 1937. (The petition in said case was filed before the Sheriff's sale) and hence said amended Subsection (s) was valid as to said 200 acre tract

and the Honorable Circuit Court of Appeals should have applied said ruling of this court to the case at Bar and should have held it valid as to said tract and reversed the decision of said District Court. (The lower Court overlooked this point as to the 200 acres).

Wright vs. Mountain Trust Bank, 81 L. Ed. Adv. Opinions 487.

Point (b). Paragraph (2) of Subsection (s) provides for a stay of all proceedings and moratorium of three years. That during said period the debtor shall be permitted to remain in possession of all of his property, provided he pays a reasonable rental. Paragraph 3 provides at the end of the three years or prior the debtor may purchase the land at its appraised value. This Court held said paragraphs valid and thereby held that Congress had the power to extend the period of redemption for three years.

Wright vs. Mountain Trust Bank, 81 L. Ed. Adv. Opinions 487 (491-492-493-494 and 495). Subsection (s) U.S.C.A. 11-203 Frazier Lemke Act Aug. 25, 1935, p. 166-168.

Point (c). On the other hand said Honorable Circuit Court of Appeals held that Congress had no power to extend the period of redemption beyond the time allowed by the Statute of Indiana. (Rec. 6184-47-48).

Point (d). This Honorable Supreme Court when it held that Congress had the power to extend the time of redemption three years from August 28, 1935, intended that said rule should apply to all cases coming under Subsection (s) of August 28, 1935, and

be "The Supreme Law of the Land," on said subject and it did not mean that when said rule came in conflict with a State law, that the State law could restrict and nullify this power of Congress but meant that said Act was supreme and that the laws of the States to the contrary must yield and give way.

No citations deemed necessary.

Point (e). This Honorable Court took up every paragraph of said Subsection (s) and held each a valid exercise of the powers of Congress over the subject of bankruptcies.

Wright vs. Mountain Trust 81 L. Ed. 487.

Point (f). It was the duty of the Honorable Circuit Court of Appeals to follow and apply said decision of the Supreme Court in the case at Bar as to said 200 acre tract.

Self-evident.

Point (g). If there was any doubt as to said decision of this Court, it was the duty of said Circuit Court of Appeals to resolve the doubt in favor of the ruling of this Court and in favor of the validity of said Subsection (s).

Wright vs. Mountain, etc. 81 L. Ed. 487, citing.

Crowell vs. Benson 285 U.S. 22-62 (492) 76 L. Ed. 598-619.

Point (h). But this Honorable Court in said Wright case went far beyond the mere powers of Congress to postpone the payment and enforcement of a mortgage debt in bankruptcy cases (which only affects the remedy to enforce and does not impair the obligation of the contract) and that even

though this Subsection (s) deprived the creditor of rights which actually impaired the obligation of the contract and lien, yet under its broad powers—"To establish . . . . . uniform laws on the subject of bankruptcies throughout the United States" . . . . . it had the power to take away those rights and impair the contract.

Wright vs. Mountain, etc. 81 L. Ed. 487. (496-497). This decision ranks with McCulloch vs. Maryland and other celebrated decisions of this great court.

Point (i). In order that no one hereafter should undertake to quibble about what the Court was deciding, it pointed out: "The legislation (Subsection (s)) is designed to aid victims of the general economic depression."

Wright case 81 L. Ed. 487 (495).

In substance that it was an emergency act to aid and enabled those engaged in the basic industry of the Country to save their homes from forced sales and confiscations, Par. 9 (6) Subsection (s).

"The farmers' proceeding in bankruptcy for rehabilitation resembles that of a corporation for reorganization." "As to the latter it is expressly provided that the debtor may to some extent, be left in possession, 11 U.S.C.A. 207 (c); and it is common practice to appoint as receivers one of the officials of the corporation."

Wright case 81 L. Ed. 487 (495).

To arrive at the intent of Congress this Honorable Court considered reports of Congressional Committees and explanations given by the members of Con-

gress on the floor of the Senate and House by those in charge of the measure.

Wright case 487 (493-5).

The Court further said: "A Court of Bankruptcy may affect the interests of lien holders in many ways. To carry out the purpose of the bankruptcy Act, it may direct that all liens upon property forming part of the bankrupt's estate be marshalled; or that the property be sold free of incumbrances and the rights of all lien holders be transferred to the proceeds of the sale."

Citing Van Huffel vs. Harkelrode, 76 L. Ed. 256-258.

Wright case 81 L. Ed. 487 (497).

And further: "Despite the peremptory terms of a pledge, it may enjoin sale of collateral, if it finds that the sale would hinder or delay preparation or consummation of a plan of reorganization.

Citing Continental Ill. etc. vs. Chicago R. I. etc. 79 L. Ed. 1110-1131.

Wright case 81 L. Ed. 487 (497).

And further: "It may enjoin like action by a mortgagee which would defeat purpose of Subsection (s) to effect rehabilitation (reorganizing or refinancing himself of the farmer mortgager"). We will add that this act of Congress and the decision of this Honorable Court upholding it put the farmer on an equality with other insolvent industries and marks a new epoch in the history of remedial agricultural and bankruptcy legislation. The Federal Courts have been granting these same rights to other insolvent industries for some years.

Point (j). Paragraph (n) of said Subsection (s)

provides: "The filing of a petition for relief under this section shall subject the farmer and his property wherever located to the exclusive jurisdiction of the court." His rights vested on that date.

11 U.S.C.A. 75 (n).

Point (k). The new Subsection (s) Paragraph (5) continued said rights. "(5) This Act shall be held to apply to all existing cases now pending in any Federal Court under this Act . . . . . and all cases that have been dismissed by any conciliation commissioner, referee, or Court, because of the Supreme Court decision holding the former Subsection (s) unconstitutional, shall be promptly reinstated."

11 U.S.C.A. 203 (5).

Point (l). Paragraph 6 declares the Act to be an emergency measure.

Point (m). Conceding that this new Act takes away the right of the mortgagee to a deed for the land under the laws of Indiana, yet this Court held that Congress in the emergency had the power to extend the period of redemption for three years to enable the farmer to re-finance himself and pay into Court the appraised value of the land and save his Home.

Wright case 81 L. Ed. 487 (492) Par. (3) Act August 28, 1935.

Point (n). The power to enact laws on the subject of bankruptcies delegated to Congress in the Constitution (Art. 1, Sec. 8, Par. 4) is one of the greatest of its powers. It stands in the class with the power to declare war, to coin money and regulate the value thereof, to declare what shall be a legal tender or declare an embargo. The exercise of these

great constitutional powers means the impairment of the obligations of contracts and untold millions of damages to the citizens of the United States.

Gold cases — Norman vs. Baltimore, Vol. 55 Supreme Court, Rep. 407, (79 L. Ed. 885 (900).

For the incidental damages caused by the exercise of these constitutional powers, there is no remedy.

Supreme Court Reporter, March 1, 1935, p. 407 (415). See Legal Tender cases, Knox vs. Lee, 12 Wall, 549-551, 20 L. Ed. 305.

Juilliard case, 110 U.S. 4.28 L. Ed. 211.

POINTS AND AUTHORITIES AS TO THE 80.31 ACRE TRACT.

It has been shown above that this tract had been sold at Sheriff's sale before October 29th or 30th, 1934, when the petition was filed. This land was also included in the petition. The filing of the petition in bankruptcy during the year of redemption was in time and gives the Bankruptcy Court jurisdiction of the bankrupt and his property.

In the Act of August 28, 1935, Congress provided in Section 4 in amending Subsection (n) of Section 75 that petitions in bankruptcy could be filed during the year of redemption. This should be considered as declaratory. Section 4 (n) Act. August 28, 1935.

Point (a). This Court held that said Subsection (s) was constitutional in all cases whether the bankruptcy petition was filed before or after the Sheriff's sale under the state law.

Wright vs. Mountain Trust Bank, 81 L. Ed. 487.

Point (b). The Honorable Circuit Court of Appeals based its opinion on Lafayette Life Insurance Co. vs. Lowmon, 79 F. (2nd) 887. (R. opinion 6184-47-48).

Point (c). In the Lowmon case the debtor had filed her petition in bankruptcy after the Sheriff's sale or during the year of redemption. In the case at Bar as to the 80.31 acres the petition was also filed during the year of redemption. The Supreme Court in said (Va.) Wright case in its preliminary statement showing the grounds for certiorari, singled out said Lowmon case and others and referred to the fact that the Circuit Court of Appeals in said case had held said Subsection (s) invalid and that in the 5th Circuit in Dallas Bank vs. Davis (83 F. (2nd) 493) the Circuit Court of Appeals in said 5th Circuit and other cases had held the same act valid. This Lowmon case was one of the causes of the conflict with said decision in other Circuits. It had to be overruled or disapproved to bring about uniformity. Uniformity could not be brought about by leaving the erroneous doctrine of said Lowmon case stand. It had to be overruled and was overruled.

Then the Court said: "Because of this conflict (the conflict caused by the decision in the Lowmon case) and the importance of the question, we granted certiorari."

Wright vs. Mountain Trust Bank 81 L. Ed. 488, 2nd column.

Point (d). Then the Supreme Court took up every paragraph of amended Subsection (s) and held it constitutional.

Wright case above.

Point (e). The Supreme Court in holding said Subsection (s) constitutional necessarily overruled the Lowmon case, and rejected the doctrine on which it was based.

Point (f). Since the Supreme Court cited the Lowmon case and that it held the act void, it must be presumed that this Court understood that decision and the facts therein, i.e. that in that case the Circuit Court of Appeals made the case turn on the point that the debtor had filed her petition in bankruptcy during the year of redemption and that it rejected such a doctrine.

Point (g). If this Court in the (Va.) Wright case had intended that its decision should only apply to cases where the petition in bankruptcy had been filed before the Sheriff's sale, and did not apply to those filed during the year of redemption, it would have said so. It would not have left any doubt on that point.

Point (h). The Honorable Circuit Court of Appeals in the case at Bar had no right to place a limitation on the decision of this Court in the (Va.) Wright case which this Court did not itself put thereon.

Point (i). It was the duty of said Circuit Court of Appeals to apply said decision of this Court to cases filed before and after the Sheriff's sale and if it was in doubt on that point it should have certified the question to this Court as provided by the statute and the Rules of this Court instead of placing upon

this insolvent farmer the whole burden of taking this case to the Federal Supreme Court.

11 U.S.C.A. Sec. 239. Judicial Code as amended February 13, 1925 (Rule 37 (1) Sup. Ct.) June 5, 1928.

Point (j). Under the law of Indiana the mortgagor (the petitioner) remains the owner of the land until the end of the year of redemption.

Neff vs. Hagaman, 78 Ind. 57 (62).

Robertson vs. Van Cleave, 129 Ind. 217 (225).

Burns Ind. Stat. 1926, Sec. 831.

Rev. 1933, Sec. 2-3919.

Point (k). This Bankruptcy Act is a remedial Act and it was the duty of the Court of Appeals to liberally construe it to carry out the purposes for which it was intended.

Remington on Bankruptcy (4th Ed.) Vol. 1, Sec. 25.

Many decisions could be cited.

Point (l). The right to redeem land from a Sheriff's sale or the equity of redemption is property. It can be levied on and sold on execution under the Indiana Statute.

Burns Ind. Stat. 1926, Sec. 795.

Point (m). A judgment is a lien against the equity of redemption which may be sold on execution.

Julian vs. Beal, 26 Ind. 220 (222).

Point (n). "It must be conceded that the right of redemption is a property right."

In re-Argyle Lake Shore, etc. 78 F. (2nd) 491.

Point (o). It follows that if the petition in bankruptcy is filed while the debtor is in possession and has such an interest in the land, it is in time and gives the Bankruptcy Court exclusive jurisdiction over the debtor and all of his land and Congress had the power to extend the statutory period of redemption.

In re-Cope 8th Fed. Supp. 961.
In re-Nelson 9th Fed. Supp. 557.
U.S. Bank vs. Pamp, 83 Fed. (2nd) 493.
In re-Bradford 77 Fed. (2nd) 992.
In re-Duffy, 9th Fed. Supp. 166.
In re-Klein 9th Fed. Supp. 57.

Point (p). Such a narrow strained construction of Subsection (s) as was given by the Circuit Court of Appeals is foreign to the intent of Congress (and Mr. Lincoln said: "The intent of the lawgiver is the law") and defeated the purpose for which this Act was passed. Congress intended to save farm homes —not to confiscate them. The reports of the committees of the House and Senate on Subsection (s) show it was understood that it applied to petitions filed during the year of redemption.

Point (q). No difference what the rights of the mortgagee were under the statute of Indiana, they must yield to the "Supreme law of the land." Congress in the exercise of this great power in an emergency had the power to impair that right and take it away.

Wright vs. Mountain Trust Bank, 81 L. Ed. 487.

Norman vs. Baltimore, Supreme Court Reporter, March 1, 1935, 407 (414-15) 79 L. Ed. 885.

Knox vs. Lee, 12 Wall, 549-551, 20 L. Ed. 305 and other Legal Tender cases, 28 L. Ed. 211.

Point (r).. Grant it is the duty of the Federal Courts to defend the constitution when the National Legislature transcends its powers, and hold such laws void, yet on the other hand it is their solemn duty to give to the Constitution and the laws of Congress enacted under it, a liberal construction and give to the people who made it and who have preserved it, all of the rights expressly or impliedly granted to them therein. "For the letter killeth but the spirit giveth life." The true rule of interpretation of the Constitution is well expressed by this Court in Home, etc. vs. Blaisdell, 78 Law Ed. 413 (431). You need look no further.

ARGUMENT IN SUPPORT OF SAID POINTS AND AUTHORITIES AS TO THE 200 ACRES WHERE THE PETITION PRECEDED THE SHERIFF'S SALE OF THE LAND.

(A). As to said 200 acre tract, the decision of this Court in the (Va.) Wright case above where the facts were the same as in the case at Bar, settles the question beyond all controversy that said Subsection (s) is valid as to said tract and that said Court of Appeals erred in not applying and following it and that it should have reversed the District Court.

(B). That as to said 80.31 acres the statement of said propositions and the citations supporting them

is a sufficient argument in and of itself. Any attempt to argue them would be largely a repetition. The Court of Appeals should have reversed the District Court as to that. Enough has been said for the present.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers; that this Court should grant said petition for a writ of certiorari herein commanding said Honorable Circuit Court of Appeals of said Circuit to send the record and proceedings in said cause to this Court without delay so that this Court may review and act thereon as of right and according to law and as ought to be done. And the petitioner prays this Court to reverse the order and judgment of said Circuit Court of Appeals as to both tracts of said land.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana,
Member Bar Supreme Court.

WM. LEMKE,
Fargo, N. Dakota,

Counsel for Petitioner,
James M. Wright.

APPENDIX.

Pertinent Quotations from Bankruptcy Act. August 28, 1935.

Sec. 4. That section 75 of said Act, as amended, be further amended by amending subsection (n) to read as follows:

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

"Sec. 6. That section 75 of said Act, as amended, be further amended by adding a new subsection (s), after subsection (r), to read as follows:

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section."

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject

to all existing mortgages, liens, pledges, or encumbrances."

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their inter-

ests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation."

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: **Provided**, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: **Provided**, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however,

the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act."

"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act, as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection (s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section."

"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate."

Approved, August 28, 1935.

11 U.S.C.A. 203, Subsection (s), Par. (1) (2) (3) (5) and (6).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

Nos. 715 and 716.

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

PETITIONER'S REPLY BRIEF.

HOMER E. BAILEY,
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Of Counsel.

SAMUEL E. COOK,
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IN THE

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PETITIONER'S REPLY BRIEF.

The Petitioner, for reply to Respondent's brief, says:

1. The Respondent first sets out the opinion of the Circuit Court of Appeals (91 F. (2d) 894).

2. It is obvious the Court was in error in stating the debtor had no interest in the land when he filed his petition on October 30, 1934. Later in the opinion, the Court conceded he had an interest—the right to redeem. This is all the title he needed to file and give the District Court jurisdiction. See cases in Petitioner's Brief, Page 24-25. Then it proceeded in five

pages of discussion to hold that Subsection (s) did not extend that period. In doing this it held said subsection was properly before the Court. Brief, pages 6, 7, 8, 9, 10, 11.

3. All we desire to say about the Petitioner conveying the land subject to the mortgages to his children and them conveying it back, is that he had an interest in it all of the time because of his liability on the mortgage, his retention of the possession thereof, and his right to redeem from the sale thereof.

4. That the question of his title was not raised in time. That all of the land was conveyed back to him before the foreclosure of the mortgage on the 200 acres: Rec. 9-8 shows: Land conveyed back April 13, 1935.

Judgment on 200 acres May 27, 1935.

Sold July 20, 1935, eight months after petition in bankruptcy was filed. Brief Page 4. Like the facts in (Va.) Wright case.

5. The fatal thing is that the Record shows that the Respondent did not file its motion questioning his ownership of the land or right to file his petition in bankruptcy until July 29, 1936, over one year and four months after the land was conveyed back to him. Rec. 21 (1).

6. It is plain the Respondent could only raise this question in the Bankruptcy Court (which is a Court of Equity) except by an answer and it did not do so until it was too late. This laches amounted to a waiver as to whether the debtor was the proper party to file the petition and the real party in inter-

est on October 29, 1934, and the deed back had cured it all.

7. We contend that a petition in Bankruptcy under Section 75 and its amendments should be considered like a suit in equity. That Equity Rule 43 requires the defendant (creditor) to seasonably answer that it is defective for want of parties. That if this is not done, the question is waived.

> A Federal Suit in Equity 2d Ed. p. 259, citing a number of cases.
> Ibid, p. 261.
> Equity Rules 43-44, Cyc. Fed. Proc., Vol. 3, Sec. 827.

8. It will also be noted that no such question was raised here until after the Act of August 28, 1935, was passed and over 22 months after the petition and schedules (bill) had been filed and 16 months after the debtor had become the absolute owner of the land. Such neglect gave the Respondent no standing in a Court of Equity.

Petition filed October 29, 1934, Rec. 8. Land conveyed back April 13, 1935, Rec. 9. Motion raising question of ownership filed July 29, 1936, Rec. 21.

9. This was not all. His case was pending in the District Court when the amended Act of August 28, 1935, took effect and was continued thereby. On that date he was the absolute owner of the land and had been such since April 13, 1935, and he was such owner on October 11, 1935, when he filed his amended petition under said amended Subsection (s). If all that be true what right had the District Court to strike his land out and refuse to permit

him to amend his petition and denied him the benefits of said amended Act. The District Court and the Circuit Court of Appeals should have given a liberal construction to said Act to carry out its purpose of saving farm homes, instead of a narrow, technical, strained construction which defeated the purposes of said Act.

He became absolute owner April 13, 1935, Rec. 9. Amended Subsection (s) enacted August 28, 1935. 11 U. S. C. A., Sec. 203. Continuing old case, Par. (5) Ibid. He amended his petition October 11, 1935. Rec. 9.

10. Conceding but not admitting that there was some irregularity—that was cured by the deed back to him on April 13, 1935, over a year before the Respondent undertook to question it. Certainly after all irregularities had been removed and the debtor had become the absolute owner of the land, the Respondent could not question his right to the benefits of Section 75 and its amendment. The Respondent was too late. The door had been closed. A Court of Equity should reject such a narrow view as that.

11. That question being waived, it was admitted before the Circuit Court of Appeals and it had no right to question his title. It should have found the debtor's title was admitted; that he had the right to file his petition in bankruptcy on October 29, 1934. The deed back related back to that date. His petitions to amend were verified and no answer or denial was ever filed. Hence they were admitted. Rec. 2 to 5, 8-9. And the Circuit Court had no right to disregard them.

12. The Court finally admits that on August 28,

1935, he had an interest—the right to redeem—and had such an interest on October 11, 1935, when he amended his petition but contended that right ended on July 29, 1936, unless the amendment of August 28, 1935, operated to extend his right of redemption. Opinion in Brief, p. 6 (middle of page). Thus the Court held he and his land were properly in Court and that he had the right to redeem but that Congress could not extend the period of redemption to August 28, 1938. Then the Court proceeded to review the Lowman and other cases and held Subsection (s) was void. Brief Page 6, 7, 8, 9, 10 and 11. The only thing it was deciding was that this Subsection (s) was unconstitutional. The record shows there was nothing else to decide. The decision that it was unconstitutional was necessary to decide the case before it. It could not affirm the decision of the District Court without holding Subsection (s) void. It was a clean-cut decision that the Moratorium Act of Congress was null and void and that the debtor should be denied the benefits thereof. His only remedy was to appeal to this Court.

This Court in the recent case of Indiana Ex Rel. Anderson vs. Brand (Jan. 31, 1938) held in substance, that it had the right to examine the opinion below to ascertain what question was raised and decided (82 Adv. Opinions 447).

13. When the Court reads these five pages it will find that the trouble was that the Honorable Circuit Court of Appeals made the mistake of following the Lowman Case (its own decision) instead of follow-

ing the decision of this Court in (Va.) Wright vs. Mountain Trust Co., 300 U. S. 440, 81 (L. Ed.) 736. The Lowmon Case was before this Court in the above case and this Court could not have held the Act valid without rejecting the doctrine of said case. It could not have removed the conflict without overruling it.

14. Then to clinch the matter, the Respondent on page 11 of its brief admits the question before the Court of Appeals was whether Subsection (s) extended the period of redemption until August 28, 1938.

15. After the Respondent thus admits in one breath that the question before the Court was whether Subsection (s) extended the period of redemption how can it in the next claim that some other technical question was before the Court, especially where it waited 16 months after the debtor became the absolute owner of the land before it ever questioned his ownership and his right to file under Section 75 and amended Subsection (s).

16. Then after admitting that the question before the Court was the validity of Subsection (s) it wastes 4 pages of its brief (pages 12, 13, 14 and 15) in rehashing the matter about these deeds. This in the face of the fact that it never questioned the debtor's title to the land and his right to file his petition in Bankruptcy for 16 months after he became the absolute owner of the land. He has owned it ever since then during all of these proceedings and owns it now. The Respondent's position that these deeds to the children has anything to do with the

real question in this case is absurd and should have been rejected by the lower Court as impertinence.

Equity Rule 21.
A Federal Suit in Equity (2d Ed.), p. 346.

17. The petitioner could not have prepared his petition without including this land in his schedules. He was still liable for the mortgage debt. How can it be said he had no interest in the land?

He remained in possession after the deeds to his children, assisted in farming it and received a part of the rents and profits thereof. Rec. 4 (Explanation)—As stated above, this was admitted by the failure to deny or answer it. Rec. 2, 3, 4, 5, 6, 7, 8 and 9.

18. On page 16 the Respondent undertakes to give the objections why the petition herein should be denied. The first has been sufficiently answered above. The second is misleading. His petition in bankruptcy as to the 80.31 acre tract was filed October 29, 1934, during the year of redemption and before the deed was delivered and as to the 200 acre tract the petition in bankruptcy was filed before the sheriff's sale. The 80.31 acre tract was sold July 12, 1934. Brief, p. 3. Original petition filed October 29, 1934. Rec. p. 8. The 200 acre tract not sold until July 20, 1935, nine months after the petition in bankruptcy was filed. Brief, p. 4.

19. The fallacy of this reasoning is that Respondent is trying to use the Law of Indiana to restrict the powers of Congress to enact laws on the subject of bankruptcies.

The third is a mere assertion, that there is no conflict between the instant case and this Court's decision in (Va.) Wright Case.

This Court in the latter held that this Subsection applied to all cases whether filed before or after the sale or where the year had commenced to run. It did not intend to limit its decision only to cases where the petition had been filed before the sale and the Circuit Court of Appeals had no authority to put such a limitation thereon. If it had so meant it would have said so. ("If it were not so I would have told you").

There is a conflict. That conflict will not be removed until this Court overrules the decision in the Lowman Case and in the instant case. Thousands of farmers have turned their faces for the last time on their homes because of these decisions.

20. The Respondent takes five pages for argument. Brief 17-21. All of the points in the argument have been answered above and will not be noticed further here except (1): We oppose the position that the Lowmon Case (79 F. (2d) 887) was not overruled in the (Va.) Wright decision of this Court and—that the Lowmon Case was only mentioned by this Court as a "basis for granting certiorari." It was mentioned because it was the cause of the conflict. Respondent is trifling with words. If the Lowmon Case "was the basis of granting certiorari" then it was before the Court and necessarily had to be considered by this Court. The Court cited it and gave the report in which it is found. Hence, it must

have read it and found that it was a case where the petition in bankruptcy had been filed after the sheriff's sale and after the year had commenced to run. The Court of Appeals held that Congress could not extend the period of redemption. This Court held that it could. In so holding it rejected the doctrine of the Lowmon Case and disapproved and overruled it.

Besides this, the records of Congress show that the committee in charge of Subsection (s) in the Senate and House reported that it applied in all cases whether the petition in bankruptcy was filed before or after the sale of the land under the State law. We are informed by Counsel who participated in the oral argument in the Wright Case in this Court that it was so stated in that argument and that this Court must have understood it. The Respondent misstates the law of Indiana when it says the mortgage was merged in the decree. It is just the opposite. The lien continues to the end of the year. The debtor continues to be the owner of the land and the purchaser has no title. The year of redemption is not sold or bid on. All he has is the right to a deed at the end of the year. See cases cited in Petitioner's Brief on page 24, Point (j). Also Knapp vs. Building, etc., 7 N. E. (2d) 938.

And except (2) the Respondent argues that the mortgagee had gained some right under the Indiana law and decisions which would conflict with and restrict and powers of Congress and of this Court.

The subject of bankruptcies (including the power to impair contracts) has been expressly delegated to

Congress. Its acts on that subject and the decisions of this Court thereon are supreme and cannot be restricted by the laws of Indiana or decisions of its Courts.

Wherefore the petitioner prays this Court to grant his petition for a writ of certiorari and on the final hearing to reverse the order and judgment of said Circuit Court of Appeals.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

Nos. 715 and 716.

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT, Appellant.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Appellee.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 7TH CIRCUIT.

BRIEF OF JAMES M. WRIGHT, APPELLANT.

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ELMER McCLAIN,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

No. 715-716.

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT, Appellant.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Appellee.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF JAMES M. WRIGHT, APPELLANT.

I. OPINIONS BELOW.

The opinion of the District Court for the Northern District of Indiana, Fort Wayne Division, was not reported.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is reported in 91 Fed. (2d) 894. (Opinion set out in full in R. 67-74).

II. JURISDICTION.

Certiorari was granted by this Court February 28, 1938, under Rule 38 (5) (b), providing for writ in case of conflict in decisions, etc. Revised Rules Supreme Court, June 5, 1928. (Rule 38 (5) (b)). Sec. 240 (a) Judicial Code (Mason's) as amended February 13, 1925.

III. STATEMENT OF THE CASE.

(1). The petitioner was an insolvent farmer residing in Jay County, Indiana, within the jurisdiction of said District Court and filed his petition and included in his schedules his 280 acres of real estate therein for the benefits of the provisions of Section 75 of the Federal Bankruptcy Act on October 29, 1934 (R. 2-8).

He amended his petition under subsection (s) enacted August 28, 1935, on October 11, 1935. (R. 2-9).

(2). On the petition of the Appellee the Referee struck Appellant's land from the schedules (R. 37). The petition of the Appellant to review this action was denied by the District Court (R. 42) (Opinion R. 67).

The District Court also denied Appellant's petition to amend his schedules (R. 8). (Opinion R. 67).

(3). From these orders of the District Court the petitioner prayed an appeal to the Circuit Court of Appeals for the Seventh Circuit with assignment of errors. (Rec. 42) (R. 11).

The Appeals were granted by the District Court and perfected. (R. 44) (R. 13-14) (Opinion R. 67).

(4). The Circuit Court of Appeals stated that the questions in both appeals were practically the same and consolidated them. (R. 67) (R. 69).

(5). After several pages of discussion about the title (which we showed in the reply brief on the petition for the writ was waived by the Respondent in failing to object to the parties to the petition until 16 months after it was filed, or raise any question as to the petitioner's title)—the Court in its opinion finally reached the conclusion that on August 28, 1935, the debtor had an interest in the land—i.e. the right to redeem from the sheriff's sale; that said right ended July 20, 1936 (one year from the date of the sale)—unless said amended subsection (s) of August 28, 1935, operated to extend his right of redemption (to August 28, 1938, (R. 70).

(6). The Court states in substance that Appellant contends that said amendment (subsection (s)) operated not only to extend the time for redemption of the 200 acre tract but also to void the deed for the 80.31 acre tract and to extend the time of redemption as to it.

(7). The original petition and schedules in bankruptcy were filed October 29, 1934. The 200 acre tract was not sold until nine months afterwards—(July 20, 1935) (Rec. 8-9) (Opinion R. 70).

The 80.31 tract was sold July 12, 1934, before the petition was filed or during the year of redemption. (Opinion R. 70).

(8). The Circuit Court then proceeded to decide the question of whether subsection (s) of August 28,

1935, extended the period of redemption as to both tracts. It did not apply or follow the decision of this Court in (Va.) Wright vs. Mountain Trust Bank (March 29, 1937) 81 L. Ed. 736, 300 U. S. 440 but followed the erroneous doctrine of Lafayette Life Insurance Co. vs. Lowmon, 79 F. (2d) 887, and held that Congress had no power to extend the period of redemption under the State law and that said Subsection (s) was void as to both tracts and affirmed the decisions of the District Court (Opinion R. 70-71-72 and 73). The Circuit Court denied Appellant's petition for a rehearing on September 20, 1937 (R. 76).

(9). It will be noted that the Circuit Court took no notice that as to the 200 acre tract, the petition in bankruptcy was filed over nine months prior to the sale of said tract and failed to follow the decision of this Court that Congress had the power to extend the period of redemption until August 28, 1935.

QUESTIONS PRESENTED.

(10). Two questions are thus presented:

(a). Did Congress have the power to extend the period of redemption or stay as to the 200 acre tract and did said subsection (s) apply to said tract in which the petition in bankruptcy was filed before the period of redemption commenced to run and should said Circuit Court have followed the decision of this Court in the Wright case and reversed said decisions of the District Court?

(b). Said Circuit Court instead of applying the erroneous doctrine of Lafayette vs. Lowmon, 79 F. (2d) 887 should have followed and applied the

doctrine of this Court in (Va.) Wright vs. Mountain Trust Bank, 81 L. Ed. 736 to the 80.31 acre tract and even though the petition in bankruptcy was filed after the period of redemption commenced to run and should have held that subsection (s) applied and extended the period of redemption or stay, the same as to the 200 acre tract—and should have reversed the decision of said District Court. (The present proceedings of Congress clearly show the policy of that body on this question. It is now considering it and will likely extend said moratorium or stay until March 4, 1940).

IV. SPECIFICATION OF ERRORS.

Among the assignment of errors were:

(4). "That said (District) Court erred in holding that the debtor was not entitled to the benefits of the provisions of amended subsection (s) of section 75 of the Bankruptcy Act of August 28, 1935). (R. 12).

(5). "That the Court erred in depriving the debtor of the benefits and relief granted in said amended subsection (s) of August 28, 1935). (R. 12).

V. ARGUMENT ON THE MERITS.

(1). Summary of argument as to the 200 acre tract.

Point (a). The petition as to the 200 acre tract having been filed nine months prior to the sale, the facts here are the same as in the recent case of Wright vs. Mountain Trust Bank. 81 L. Ed. 736, 300 U. S. 440.

Point (b). This Court in the (Va.) Wright case has squarely held that subsection (s), enacted

August 28, 1935, is constitutional and hence that it applies in this case as to the 200 acre tract.

Point (c). The rights of the debtor under Section 75 and its amendments vested at the time of the filing the petition—October 29, 1934. No alleged rights under the State law could have been acquired after that date which would deprive him of the benefits of the Act.

Point (d). This Court held in the Wright case that the order of reference in the petition in bankruptcy initiated the proceedings and gave the debtor the right to the stay of three years and the other benefits of Section 75 and its amendments.

Point (e). The adverse decision of this Court in the Radford case did not change the situation. Subsection (s) was applied to all cases, like this, pending in the Federal Court and continued and kept them alive. Hence, the District Court had exclusive jurisdiction over the land at and after the enactment of the new subsection (s) on August 28, 1935.

Point (f). When the petition herein was filed there had been no sale of the 200 acre tract. No period of redemption had commenced to run and no deed had been delivered.

Point (g). The petition in the Lowmon case was filed after the year had commenced to run. The Circuit Court committed error in following it in its ruling as to the 200 acre tract. It should have followed the decision of this Court in the (Va.) Wright Case and rejected all others.

Point (h). The doctrine in the Lowmon case was rejected by this Court and overruled in the decision in the (Va.) Wright case. This Court could not have

removed the conflict in the decisions without overruling it.

Point (i). Paragraph (2) of subsection (s) expressly stayed all judicial and official proceedings in the State Courts against the debtor for the period of three years from August 28, 1935. That only affected the remedy.

Point (j). The Circuit Court had no power to put limitations on the opinion in the (Va.) Wright case which were not placed thereon by this Court.

Point (k). The decision of this Court in the (Va.) Wright case was supreme and any alleged rights asserted under State laws had to give way.

Point (l). The Circuit Court erred in not reversing the decision of the District Court.

(2). Summary as to 80.31 acre tract.

Point (a). The Supreme Court in the (Va.) Wright case intended to hold subsection (s) was constitutional in all cases whether the petition was filed before or after the sale of the real estate. If it had intended to limit it to cases filed before the sale of the land, it would have said so.

Point (b). Under the law of Indiana, the mortgagor remains the owner of the land until the end of the year.

Point (c). The year of redemption is not bid on or sold at the sheriff's sale of the land.

Point (d). The Bankruptcy Act is remedial and should have been liberally construed to carry out the purposes of Congress.

Point (e). The right to redeem from a sheriff's sale is designated as the equity of redemption and is property of the debtor.

Point (f). It is the absolute property of the debtor and public policy forbids him from waiving it and it can not be taken for a deficiency judgment or taxes.

Point (g). Congress intended by Section 75 and its amendment, subsection (s), that the owner of the equity of redemption had the right to file a petition under this Act at any time before the expiration of the year of redemption and it extended the period of redemption or stay for three years from August 28, 1935, the same as though the petition in Bankruptcy had preceded the sale of the land.

Point (h). Congress nor the Supreme Court never intended to apply subsection (s) only to cases filed before the sale and to not apply it to cases filed during the year of redemption.

Point (i). Congress intended to give the owner of the equity of redemption a stay of three years and the right to remain on his land and rehabilitate himself and refinance his loan, the same as though he had filed before the sale.

Point (j). This Court in the (Va.) Wright Case could not have removed the conflict in the decisions except by overruling the Lowmon case. It was the cause of the conflict and the conflict could not be removed without removing the cause.

Point (k). Congress had as much power to extend the stay three years where the petition was filed during the year of redemption as where it was filed before the sale of the land.

Point (l). The Circuit Court based its decision in the Lowmon case and the case at Bar on the theory that the mortgagee had acquired some

alleged right under the Indiana law which could not be taken away by the Act of Congress of August 28, 1935. The powers of Congress cannot be restricted or controlled by the laws of a State.

Point (m). The exclusive power to enact laws on the subject of Bankruptcies has been delegated to Congress by the Federal Constitution. It was denied to the States. Hence its Acts on that subject are the supreme law of the land and the laws of the States on that subject must yield and give way.

Point (n). Congress is the judge of the means it will employ in executing its constitutional powers in relieving distressed insolvent farmers.

Point (o). The Circuit Court erred in following its own decision in the Lowmon case and in not following the decision of this Court in the (Va.) Wright case and in not reversing the decision of the District Court.

Point (p). The dignity of the law rests on its harmony and uniformity. Conflict brings reproach.

Point (q). The conflict in the decisions on the questions presented here must be removed and calls for "the exercise of this Court's power of supervision."

(3). Argument of points as to the 200 acre tract.

Point (a). This point states that the petition herein was filed nine months prior to the sale of the 200 acre tract and that it is exactly like the facts in the (Va.) Wright case. We have cited the pages of the record on this fact in the above statement of the case and assume it need not be repeated here.

Wright vs. Mountain Trust Bank 81 L. Ed. 736, 300 U. S. 440.

It is plain that the decision in that case holding that Congress had the power to extend the stay for three years, controls in the case at Bar as to said 200 acre tract and that the Circuit Court should have so held.

Point (b). Is in substance that this Court in the (Va.) Wright case decided the question in the case at Bar as to said 200 acre tract.

That decision marks a new epoch in the history of bankruptcy legislation in many respects.

We will notice but one at present: The Court holds that the new Act of Congress goes upon the theory that the farmer shall retain his Home, and be given time to reorganize and refinance himself rather than to sell it.

It said: "The farmer's proceedings in bankruptcy for rehabilitation resembles that of a corporation for reorganization. As to the latter it is expressly provided that the debtor may, to some extent, be left in the possession 11 U.S.C.A. Sec. 207 (e); and it is common practice to appoint as receivers one of the officials of the corporation."

Wright vs. Mountain Trust Bank 81 L. Ed. 736 (746) 300 U. S. 440.

It provides a plan for the reorganization of the farmer.

Again: "The mortgagee is in default but it is not therefore assumed that he is a wrongdoer or incompetent to conduct farming operations. The legislation (subsection (s) August 28, 1935) is designed to aid victims of the general economic depression."

Then the Court states in substance that he is vitally interested in retaining the ownership of his

land and the interests of all will be better served by leaving him retain possession of it under the supervision of the District Court than to appoint a receiver.

Wright case 81 L. Ed. 736 (745-6).

When the Circuit Court of Appeals stated in its opinion as set out above that the debtor had an interest in the land i.e.—the right to redeem the dispute was ended, because this Court in the Wright case squarely held that subsection (s) was valid and extended the stay for three years.

Again: The Court quoted paragraph (3) providing for the stay thus:

"When the conditions set forth in this section (Sec. 75) have been complied with, the Court shall stay all judicial or official proceedings in any Court or under the direction of any official, against the debtor or any of his property, for the period of three years."

11 U.S.C.A. Sec. 203 (s). Par. (2).

After quoting paragraph (3) this Court held the Act constitutional and cited Crowell vs. Benson, 285 U.S. 22, 76 L. Ed. 598 in support of its conclusion.

The Court took up every other provision of subsection (s) and held all of them constitutional.

Point (c). This point is in substance that the rights of the Appellant under section 75 and subsection (s) vested with the filing of his petition on October 29, 1934.

Point (d). This Court has also settled both of these points in the following language in said Wright case:

"The entry of the order of reference initiated pro-

ceedings designed to move, through the appointment of appraisers, the appraisal, and the Referee's order recognizing the debtor's right to possession to the grant of the stay by the Court. Under the Act no further affirmative action by the petitioner precedent to his obtaining the stay was necessary."

Wright vs. Mountain Trust Bank 61 L. Ed. 736 (746).

Point (e). Is to the effect that the adverse decision in the Radford case does not change the situation. Paragraph (5) of subsection (s) provides:

"This title shall be held to apply to all existing cases now pending in any Federal Court under this title (the case at Bar was pending) . . . . and all cases that have been dismissed by . . . . commissioner or Referee or Court because of the Supreme Court decision holding the former subsection (s) unconstitutional shall be promptly reinstated, etc."

11 U.S.C.A. Sec. 203. Subsection (s) (5).

This paragraph brought the case at Bar forward to August 28, 1935, and from that date he was entitled to the three years stay and the right to retain the land for that period under the supervision of the Court and during that period he should retain the possession of his land on the payment of a reasonable rental.

11 U.S.C.A. Sec. 203. Subsection (s). Par. (2).

(Va.) Wright case, 81 L. Ed. 736 (742).

Point (f). When the petition herein was filed there had been no period of redemption and stay had commenced to run and no deed had been delivered.

The filing of the petition under subsection (n) of Section 75 immediately subjected the farmer and all of the land herein to the exclusive jurisdiction of the (District) Court.

11 U.S.C.A. Sec. 203 (n).

No alleged rights could have been acquired in the state courts and the mortgagee could not have bettered his condition therein as against the debtor, after the filing of said petition and schedules and the vesting of said land in the jurisdiction and control of said Bankruptcy Court. Its rights would have to be measured by the Federal Bankruptcy Acts.

Congress in the amendment of subsection (n) of Section 75 on August 28, 1935, adopts the "equity of redemption" and "the period of redemption" and subsection (s) adopts it as prescribed by State laws.

11 U.S.C.A. Sec. 203 (n).

11 U.S.C.A. Sec. 203 (s). Par. (1).

Point (g). The petition in the Lowmon case was filed after the period of redemption had commenced to run and was not an authority in the case at Bar as to the 200 acre tract where the petition preceded the sale.

Lafayette, etc., vs. Lowmon, 79 F. (2d) 887.

It had no application to the case at Bar and the Circuit Court should have disregarded it and followed the decision of this Court in the (Va.) Wright case.

Point (h). The doctrine of the Lowmon case. This Court in the (Va.) Wright case in determining whether there was a conflict in the decisions and whether it had jurisdiction stated that the Circuit

Court of Appeals for the Fourth Circuit and Lafayette, etc., vs. Lowmon (7th Circuit) had held the Act of August 28, 1935, invalid while in the (5th Circuit) in Dallas, etc., vs. Davis it had been held valid and for that reason granted certiorari.

Wright vs. Mountain Trust Bank, 81 L. Ed. 736 (739).

The Appellee here contends that said Lowmon case was not before the Supreme Court. "Saying a thing is so does not make it so." This Court knew what the facts were in that case. Why was it mentioned and the report in which it is recorded stated, if it was not to bring it before this Court. It was the cause of the conflict and this Court could not remove that conflict without rejecting the doctrine of that case. It shows this Court did not recognize the distinction made in that case and considered that Congress intended to apply subsection (s) and extend the stay and period of redemption in all cases whether the petitions were filed before or after the sale of the land.

Point (i). This Court in the (Va.) Wright case stated that paragraph (2) of subsection (s) expressly stayed all judicial and official proceedings in the State Courts against the Appellant for three years and that it was constitutional. That was the intent of Congress and the means it deemed necessary to carry out its constitutional power over the subject of bankruptcies. "The intent of the lawgiver is the law." And that there should be no doubt about it this Court said in said Wright case: "The legisla-

tion is designed to aid victims of the general economic depression."

(Va.) Wright vs. Mountain Trust Bank
81 L. Ed. 736 (742-6).

It cannot be explained why the Circuit Court of Appeals overlooked that in the case at Bar the petition in bankruptcy as to the 200 acre tract was filed before the year of redemption commenced to run; that hence it was entirely different than the facts in the Lowmon case and hence the latter should not have been applied as to the 200 acres.

Although the facts as to the 200 acres were like the facts in the (Va.) Wright case and this Court had held that Congress had the power to extend the period of redemption by providing a stay of three years, yet the Court of Appeals ruled exactly the opposite from the decision of this Court, i.e. under the same facts this Court held Congress could extend the statutory period of redemption and the Circuit Court held that Congress could not. In other words this Court held the act was constitutional and the Circuit Court held it was unconstitutional. If there ever was a case of conflict between the decisions that action of the Circuit Court is one of them.

Point (j). The Circuit Court had no power to put limitations and distinguish the decisions of this Court. If this Court had intended to limit its decision to cases where the petition had been filed before the sale and to not apply the act to cases filed after the sale, it would have said so. It would not have left such a loop-hole or such an uncertainty to cause further conflict. It intended to remove the

cause of the conflict and could not have done that without rejecting the doctrine of the Lowmon case.

Point (k). The laws of Congress and the decisions of this Court on the subject of bankruptcies are supreme over the laws and decisions of the Courts of a State. This Court held in the Wright case that Congress under its broad power—"To establish . . . . uniform laws on the subject of Bankruptcies throughout the United States"—could go further than merely affecting the remedy. It could affect and impair the substantive rights of the mortgagee.

(Va.) Wright vs. Mountain Trust Bank, 81 L. Ed. 736 (747).
Fed. Constitution, Art. 1, Sec. (8), Clause 4.

There cannot be set up two different legislative bodies to legislative on the same subject at the same time. Endless conflict and confusion would result.

Point (l). It follows—"As the night the day" that the Circuit Court of Appeals erred in applying the Lowmon case to the case at Bar. That Appellant's assignments of errors—"That said Court (of Appeals) erred in holding that the debtor was not entitled to the benefits of the provisions of the amended subsection (s) of Section 75 of the Bankruptcy Act of August 28, 1935."

"That the Court erred in depriving the debtor of the benefits and relief granted in said amended subsection (s) of August 28, 1935"—were well taken. (R. 12).

The Appellee cannot deny but that the turning point in the decision of the lower Court was on the

validity of subsection (s). Over four pages of the opinion are devoted to the discussion of that question (R. 70-74).

In the recent decision of this Court in Indiana Ex. Rel vs. Brand (82 L. Ed. Adv. Opinions 447) it was held in substance that it "may examine the opinion below to ascertain what was decided."

Such an examination here will conclusively show that the Circuit Court held subsection (s) was unconstitutional and denied the appellant of the benefits thereof on the ground that Congress could not extend the period of redemption, or provide for a stay of three years so that he could rehabilitate, reorganize and refinance himself and save his Home. This Court holds that is the sole purpose of this Act.

(4). Argument proper of points.

As to the 80.31 acre tract (Some of the points relating to this tract have been stated as to the 200 acre tract. Hence some repetition will be unavoidable). It is certainly the duty of Counsel to the Court and his client to discuss the law as he understands it to be and if he thinks the Court has decided wrong to say so and point out wherein he deems it is wrong.

Point (a). Appellant contends that this Court in the (Va.) Wright case also decided the law as to 80.31 acre tract and in holding said subsection (s) constitutional intended to apply it to all cases in bankruptcy whether the original petitions were filed before or after the foreclosure sale and that if it had intended to limit the decision to only cases filed before the sale it would have said so. That such a construction would deprive a majority of the farmers of the benefits of this remedial act and thus defeat

the intent of Congress and the purposes for which the act was passed. A construction that it was intended to apply in both of said cases would create a harmonious whole in the law—a uniformity. Splitting it up as the Court of Appeals did here would destroy that harmony and uniformity and make it piece meal legislation.

Why argue the intent of Congress when the reports of the committee in the Senate and House have settled that question?

This Court said in its decision in the Wright case that it could consider these reports in arriving at the intent of Congress.

> Wright case, 81 L. Ed. 736 (744).
> And cited McLean vs. United States, 57 L. Ed. 260 and other decisions of this Court.

These reports settle beyond all controversy that Congress intended section 75 should apply to all cases whether the petition in bankruptcy was filed before the foreclosure sale or afterwards—during the year of redemption.

> 74 Congress, 1st Session.
> Senate Report No. 985 on S. Bill 3002, May 13, 1935. Same Session House Report No. 1808 on H. R. 8728, August 16, 1935.

The parts of these Reports on this point are set out in full in Appendix 1 and Appendix 2 and made a part of this brief.

Each Report states that the old subsection (n) of section 75 was amended to clarify the intent of Congress when it was enacted. This Amended subsec-

tion (n) is set out in 11 U.S.C.A. Sec. 203 (n), p. 978.

It provides: "(n) The filing of a petition .... praying for relief under this section (Sec. 75)— shall immediately subject the farmer and all of his property .... for all purposes of this section, to the exclusive jurisdiction of the Court, including all real or personal property or any equity or right in any such property, including, among others .... the right or equity of redemption where the period of redemption has not or had not expired .... or where the deed had not been delivered at the time of the filing of the petition." The next clause repeats the same thing as to the filing during the year. It is not disputed but that the foreclosure sale as to the 80.31 tract was on July 12, 1934, and the deed delivered August 2, 1935. (R. 68).

And that the petition in bankruptcy was filed during the year of redemption on October 29, 1934. (R. 8).

Thus Congress has adopted the equity of redemption provided by the States in this legislation. Congress declares that the debtor may file his petition: (a) At any time during the period—(one year in Indiana) (b) At any time before that period expires and (c) Or at any time before the deed is delivered. In the case at Bar, as to the 80.31 acre tract the petition was filed nine months before the period of redemption expired and over ten months before the deed was delivered. Hence, his petition was filed in time and Congress extended his year of redemption or stay for three years so that he could refinance his farm and save his Home. These reports also stated another important thing which must not be over-

looked in construing this remedial act, namely: "In legislating on this subject it is just as much the duty of Congress to consider the unfortunate debtor as to consider unfortunate creditors."

Senate Report p. 5.
House Report p. 6.

Congress was dealing with the basic industry of the Country. The men and women of America will decay and lose their spirit of independence, their love of Country and their ideals of themselves and their descendants if they lose their farms and homes.

The decision of this Court in the (Va.) Wright case was mentioned in the opinion in the case at Bar. The Circuit Court of Appeals was bound to know that this Court had laid down the rule in that case that where there is doubt it may look to the reports of the Congressional Committees, etc., to get the history of the bill and the intent of Congress.

Wright case 742.

There is not a word in the opinion showing it ever considered these public documents. It is as plain as the noon-day sun that had it considered these reports it could not have held this act unconstitutional and held that it did not apply in cases filed during the year of redemption. We will show a number of decisions holding that the petition can be filed during the year.

It follows this Court in deciding the Wright case knew of this amendment and knew the purpose of Congress to provide that insolvent farmers could file during the year of redemption and obtain the benefits of section 75 and its amendment with that

knowledge and with such an interpretation it held the act constitutional.

To say that Congress and this Court did not mean that the bankruptcy could file during the year is absurd. It thus appears that the lower Court in holding the act void disregarded the intention of Congress and the decision of this Court and others. Instead of following the intent of Congress and the decision of this Court, upholding it, the lower Court followed the erroneous doctrine in the Lowmon case —one of its own decisions and used the State law to restrict the powers of Congress in enacting subsection (s).

It is plain that the amendment of subsection (n) of section (75) at the time the new subsection (s) was added on August 28, 1935, was only declaratory of the meaning of section 75 from its passage. The Senate committee reported on this point:

"There is nothing new in subsection (n) except that it more clearly expresses the original intent of Congress, as to who shall be entitled to the benefits of section 75."

When Congress declared that the bankrupt could file his petition to obtain the benefits of section 75 and subsection (s) after the foreclosure sale, before the year of redemption expired and this Court approved that construction of the Section that settled the question. The lower Court was bound thereby and had no power to disregard the intent of Congress and the decision of this Court and declare something else to be the law. The Courts have no legislative power. That power is delegated to Congress.

The Courts have nothing to do with the wisdom or propriety of the law. Chief Justice Marshall said: "Let the end be legitimate, let it be within the scope of the constitution and all means which are appropriate, which are plainly adapted to that end which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional.

McCulloch vs. Maryland, 4 Wheat. 316, 421.

There is nothing in the Constitution or in the clause delegating the power to establish laws on the subject of bankruptcies which prohibits Congress from giving a bankrupt the right to relief if he files his petition while he is still the owner of the land and before he is divested of his title.

This is not all. The decision of the lower Court is untenable, is in conflict with the decision of this Court in the Wright case and the act of Congress, is unsound and illogical and defeats the plain purposes of Congress in enacting this remedial legislation by applying an alleged right under a State law to restrict and defeat the will of Congress.

It is absurd to contend that Congress and this Court would have devoted so much time and careful consideration to this subject and only intended to apply it to the minority of cases.

Courts and other students of this remedial legislation, are driven to the conclusion that Congress and this Court were passing and construing this act to apply generally to all cases rather than to only part of them. That it was a harmonious and complete law. If Congress had intended this as piece meal legislation it would have said so. It is un-

reasonable to contend that Congress would have spent its valuable time in enacting such imperfect legislation.

The statement of such a proposition carries its own refutation. This Court said that this act of August 28, 1935, was passed "to aid victims of the general economic depression."

Wright case 746.

Congress knew that farmers who happened to file their petitions after the foreclosure sale were just as much in need of this remedial legislation as those who filed before. It considered both in the same class. It never intended to make such a distinction as the lower Court made in the case at Bar. It never intended to give relief to those who filed before and deny it to those who filed afterwards. It never intended such fragmentary, piece by piece, little by little legislation.

Courts should avoid a construction of the Acts of Congress which would lead to an absurdity.

This Court was aware of the technical and strained construction which the Circuit Court had placed upon this remedial Act in said Lowmon case and if it had intended to approve it, it would have said so. It would not have held the act valid and at the same time intended to limit it to less than half of the pending cases and deny it to all others.

The Appellee's position forces it to contend that this Court intended to approve the doctrine in the Lowmon case. It never intended that. It intended to remove the conflict. To have approved the Lowmon case would have defeated that intention. It would have been inconsistent with its purpose to bring

about uniformity in the decisions to have allowed the cause of the conflict to stand.

It intended to remove every root and branch of the cause of the conflict. The Lowmon case held this Act void and when this Court held it valid it thereby rejected the doctrine of that case and overruled it. "The axe is laid unto the root of the trees."

The lower Court in order to appear to be consistent stated that the Lowmon case was not before the Supreme Court in the (Va.) Wright case.

That made its position worse. The Lowmon case was before this Court in the Wright case. "Before" must be used in the sense of "considered." Did it consider that case and the doctrine it announced? To establish jurisdiction conflict in the decisions had to be first shown. At the beginning of the opinion this Court stated, among other things, that the Lowmon and other cases had held subsection (s) void and that in the Fifth Circuit in Dallas Joint Stock, etc., vs. Davis, the act had been held valid and that on account of this conflict and the importance of the question certiorari was granted. This Court had read the Lowmon case and learned that the petition in that case had been filed during the year of redemption. It also knew that in the case it was about to decide the petition had been filed before the sale. It also knew that the Circuit Court had held that the act was void because the petition was filed after the foreclosure sale and also held that Congress had no power to extend the period of redemption in such a case. This Court also knew that Congress had declared in amending subsection (n) of section 75 that it was the intent of Congress from

the beginning to extend the period of redemption to such cases as the Lowmon case, and the 80.31 acre tract here. This Court with this knowledge of all of the above facts and questions of law held that Congress did have the power to extend the period and it did not limit its decision to only cases filed before the sale and did not say that it did not apply to cases filed after the sale. The doctrine of the Lowmon case was before and considered by this Court. This Court desired to remove the conflict and it could not have done so without removing the cause—the Lowmon case. In holding the new act was valid it rejected the doctrine of the Lowmon case and the case at Bar. This Court never intended to leave that case stand. To leave it stand would have continued the conflict and defeated the purpose of this Court to bring about uniformity.

It has been claimed that the Lowmon case was only used as a basis for certiorari. That does not help the matter. "Basis" means foundation. If it was used as the foundation of the conflict, then it was considered as one of the causes of that conflict and that brought it before this Court. It is unreasonable to contend that this Court set out the Lowmon case in its opinion and gave the Report in which it was reported and stated it was the cause of the conflict and then to say it was not before the Court. This Court intended to disapprove of the decision in that case and it never intended to approve of the doctrine therein and leave it stand to cause further conflict.

Such a ruling instead of removing the conflict would continue it. Again the Circuit Court in the case at Bar held that he could not file during the

period of redemption and that Congress had no power to extend it.

Hence, said decision is untenable and in conflict with the Act of Congress. Which shall prevail the Act of Congress or the decision of the Court of Appeals? The latter must yield when Congress in the exercise of its power over the subject of bankruptcies declared that the debtor had the right to file during the year of redemption and also declared that it had extended that period to carry out the purposes of the act. That because the Supreme law of the land and the Circuit Court was bound thereby and it could not use any State law to overthrow this Act of Congress. This Court in the (Va.) Wright case held that Congress in the exercise of its power on this subject could go further than affect the mere remedy; that it could affect its substantive rights of the creditor, i.e. It may marshall the liens, order the property sold freed of liens and transfer the latter to the proceeds, injoin the sale of collateral as in the Rock Island case and may injoin the mortgagee from action which would defeat the purposes of subsection (s) to effect rehabilitation of the farmer.

(Va.) Wright case 747-48.

There is no ground nor theory upon which the decision of the Court of Appeals can stand. It is in the teeth of the intention of Congress and the decision of this Court.

Point (b). Under the law of Indiana the mortgagor is entitled to the possession and rents and profits from the land for one year from the date of the sale.

Neff vs. Hagaman, 78 Ind. 57 (62).
Robertson vs. VanCleave, 129 Ind. 217 (225).
Burns Ind. Statute, 1926, Sec. 831.
Rev. Statutes, 1933, Sec. 2-3919.

Point (c). Under that law the year of redemption is not bid on or sold at the foreclosure sale and the mortgagee who bids it off has no legal or equitable right to the possession or rents and profits during the year and public policy forbids the debtor from waiving this right. We cite four of the very recent decisions of the Supreme Court of Indiana in support of the above propositions:

Federal Land Bank vs. Schlecter, 208 Ind. 9 (193 N. E. 378).
Plattner vs. Mutual Benefit Life, 199 N. E. 600.
Knapp vs. National Building & Loan, 7 N. E. (2d) 938.
D. Angelo vs. Hanson, 8 N.E. (2d) 587.

Thus it is seen that the debtor's right or equity of redemption is carefully guarded by the statutes and decisions of the Courts of Indiana. Its Supreme Court speaks of it as a humane and reasonable regulation allowed so that the debtor may retrieve his fortune, if possible.

Davis vs. Rupe, 114 Ind. 588.
Sellers vs. Stoffell, 139 Ind. 468-473.

There is no law in Indiana or decisions—(nor never has been)—which conflicts with the intention of Congress to allow the debtor to file his petition during the year of redemption and to extend that

period—"which was to protect the farmer's property and Home." (Senate Report, p. 2).

Point (d). The Bankruptcy Act is a remedial measure intended to enable farmers to retain their farms and Homes and it was the duty of the Court of Appeals to turn away from a technical construction and give it a liberal and broad construction to carry out the purposes of Congress which intended to save farm Homes—not to confiscate them. "Men may construe things . . . . clean from the meaning of the things themselves." "The latter killeth but the spirit giveth life." The true rule of construction of the Constitution (and likewise Acts of Congress) is given by this Court in Home vs. Blaisdell, 78 L. Ed. 413. You need not look further.

Point (e). The right to redeem is property under the Indiana law and decisions.

Burns Stat., 1926, Sec. 795.
Julian vs. Beal, 26 Ind. 220 (222).

"It must be conceded that the right of redemption is a property right."

In re—Argyle Lake Short, etc., 78 Fed. (2d) 491.

Point (f) has already been discussed.

Point (g). Under this point we contend that the debtor filed his petition while he was in possession of the land and during the year of possession. Congress declares that was in time and this Court held the same. This gave the Bankruptcy Court exclusive jurisdiction over the debtor and the land herein and this Court held in the (Va.) Wright case that Congress had the power to extend the period of redemption. We cite the following cases which hold

that the petition may be filed during the period of redemption.

In re—Cope, 8 Fed. Supp. 961.
In re—Nelson, Fed. Supp. 557.
U. S. Bank vs. Pamp, 83 Fed. (2d) 493.
In re—Bradford, 77 Fed. (2d) 992.
In re—Duffey, 9 Fed. Supp. 166.
In re—Klein, 9 Fed. Supp. 57.

Points (h) to point (o) have already been discussed.

Point (p) (q). Thousands of farmers have abandoned or lost their farms caused by the confusion and uncertainty which resulted from the decisions in the Lowmon and the case at Bar. When this Court decided the Wright case they took new hope, but these two decisions threw everything out of gear again.

They thought they had a whole law, but those decisions cut it down to a half law. The Circuit Court should have paid attention to the rule laid down by this Court in the Wright case, namely:

"When the validity of an Act of Congress is drawn in question and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Citing Crowell vs. Benson, 285 U.S. 22-62-76 L. Ed. 598-619.

If the Court of Appeals had considered that the Reports of the Committees who framed this act had stated it applied to cases like the Lowmon and the case at Bar, it could have construed it as a valid law. There is nothing in the opinion to show it considered

this rule. All it seems to have considered was its own erroneous decision in the Lowmon case. What is the use of Congress passing laws within its scope if no attention is to be paid to them by the Courts.

The Circuit Court based its opinion in the case at Bar entirely on its own decision—the Lowmon case. It really cited only one case in support of its action in holding that the debtor could not file during the period of redemption as Congress enacted and that the latter could not extend that period. That is the case of Chicago Board of Trade vs. Johnson, 264 U.S. 1 (68 L. Ed. 533). That case is not in point at all. It did not involve the question presented here. It was a case as to whether the right in the ownership of a seat on the Board of Trade was property in bankruptcy. The Court held that it was. That was all that was decided. It could not have decided the question here because it was not before the Court. An examination of all of the quotation will show that the authority is squarely against the Court's position in the case at Bar. The Court quoted thus: "Where the bankrupt law deals with property rights which are regulated by the State law, the Federal Courts in bankruptcy will follow the State Courts." And it stopped there. What was the rest of the clause?, "but when the language of Congress indicates a policy requiring a broader construction of the statute than the State decisions would give it, Federal Courts cannot be concluded by them." And cites 243 Fed. 332.

In the case at Bar the Court held that under the State statute the debtor could not file during the year of redemption. But it is plain that the Federal

law is broader than that and the Court there held that the Federal and not the State law controlled. We are contending here that the Federal law wipes away all alleged rights under State laws.

It also cited the Blaisdell (Minnesota) case, 290 U.S. 398. That case does not help the Court but is in favor of our position here. This Court held in that case that an extension of the period of redemption under a State law was valid. This Court in the Wright case cited the Blaisdell case, showing the State had the power but pointed out that Congress had greater power than the State under its broad constitutional power over the subject of bankruptcies. Hence, in the instant case there is no citation of any authority which supports the Courts strange position. The only citation left is the Lowmon case. When we turn back to it we find it cited in support of the ruling the following: Chicago Board of Trade vs. Johnson. We have shown above it does not apply at all. On the other hand when the whole statement of the Court is given it favors our position. Then it cites Hubble vs. Berry, 180 Ind. 513. All that case decides is that after year expires its purchaser has an equitable interest. That is true, but it has nothing to do with the question here.

Then it cites:

In re—Goldman, 102 Fed. 122, a case decided in 1900 under the old bankruptcy law long before section 75 was enacted. It could not be an authority under the new act of March 3, 1933, and its amendments.

American Mine, etc., vs. Illinois Coal Corporation, 31 Fed. (2d) 507. Then Trustee received and held

property and Court ordered it sold to wind up corporation—sale without right of redemption. Court found there had been no mortgage foreclosed. Hence, no redemption. The case was decided right but does not involve the question presented here at all. The question here was not before that Court at all and it could not have decided it.

The other case is Matter of Sorensen, 77 Fed. (2d) 166. It is not a case under section 75, but under section 74 (m). It relates to what property is embraced in the petition. In subsection (a) it is provided that it should not include any proceedings in any Court in which a final decree had been entered. All that the Court decided in that case was that there had been a "final decree" (of foreclosure) and hence the property did not go to the trustee. The case was decided right but it does not apply here at all and the question here was not presented and the Court could not have decided it.

The result is that neither of the cases cited in the Lowmon case sustain the decision of the Court. Hence, the Lowmon case falls. Neither of the cases other than Lowmon case cited in the case at Bar have a thing to do with the question presented in the latter. Hence, when the Lowmon case fell the ruling in the instant cases went down with it. Nothing was left to support either case. We ask the Court to examine the above cases.

Citing cases do not make it so. They must be analogous. The same identical question must have been presented in the case cited or before the Court. If the same question is not presented the Court could not have decided it. And the language used by the

Court must have been necessary to decide the case.

Enough has been said. Grant it is the duty of the Federal Courts to defend the Constitution when Congress transcends its powers and hold such acts void, yet on the other hand, it is their solemn duty to give to the Constitution and the Acts of Congress enacted under it, a liberal construction and give to the people who made it and have preserved it, all of the rights expressly or impliedly granted to them therein.

Wherefore the Appellant prays the Court to review and reverse and set aside the order and judgment of the Honorable Circuit Court of Appeals for the Seventh Circuit as to both of said tracts of land and to direct said Court to reverse the decisions of said District Court.

Respectfully submitted,

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Huntington, Indiana.

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Counsel for Appellant.

APPENDIX 1.

Calendar No. 1031

SENATE.

74th Congress
1st Session

Report
No. 985

TO AMEND THE BANKRUPTCY ACT.

May 13 (calendar day, July 1), 1935—Ordered to be printed.

Mr. McCarran, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany S. 3002]

The Committee on the Judiciary, to whom was referred the bill (S. 3002) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto, after consideration thereof, report the bill favorably with amendments with the recommendation that it be passed.

Before we discuss S. 3002, as amended by the committee, we wish to bring to the attention of the Senate the fact that section 75 of the Bankruptcy

Act has not been held unconstitutional by the Supreme Court, save and except subsection (s).

This bill has for its object the clarification of section 75, and the rewriting of subsection (s), which has been held unconstitutional, so as to conform to the decision of the Supreme Court. We shall first discuss the amendments to section 75, other than subsection (s).

These amendments have become necessary because of the great confusion caused by the diverse rulings of the various United States district courts, in the construction of section 75. Some courts have held that the farmer debtor could not take advantage of the act after foreclosure sale, and during the period of redemption. Some of these courts have refused to permit the farmer in that position to file his petition, although under the law of the State, he was in possession and full control of the property, and could redeem it within the period allowed.....

.....

Obviously, these courts are reasoning too technically, and have failed to carry out the intention of Congress, which was to protect the farmer's property and home. Other courts have just held the opposite, and have given full protection, and carried out the intent of Congress. There should be uniformity. The amendment to subsection (n) remedies this situation. .....

The amended subsection (n) in fact construes, interprets, and clarifies both subsections (n) and (o) of section 75. By reading subsections (n) and (o) as now enacted, it becomes clear that it was the intention of Congress, when it passed section 75, that the

debtor farmer and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer prior to confirmation of sale, and during the period of redemption; and that no proceedings after the filing of the petition should be instituted, or, if instituted prior to the filing of the petition, should not be maintained in any court, or otherwise. Yet there have been a multiplicity of different holdings and conclusions reached by different courts on this subject. The amended subsection (n) clarifies, construes, and interprets the intent of Congress, so as to bring about uniform decisions and rulings by the courts in the future.....

The only farmer who can take advantage of this act must be a bankrupt. A bankrupt is a financial wreck. The question of interest and profits in bankruptcy proceedings is never considered. The question is one of salvaging, and saving what can be saved out of the wreck. In legislating on this subject it is just as much the duty of Congress to consider the unfortunate debtor as to consider the unfortunate creditors.

APPENDIX 2.

HOUSE OF REPRESENTATIVES.

74th Congress
1st Session

Report
No. 1808

TO AMEND THE BANKRUPTCY ACT (AGRICULTURAL COMPOSITIONS)

August 16, 1935—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Lloyd, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 8728]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8728) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto, after consideration, report the same favorably with amendments with the recommendation that the bill as amended do pass.....

At the very outset, before we discuss H. R. 8728, as amended by the committee, we wish to bring to the attention of the House the fact that all of section

75 of the Bankruptcy Act has not been held unconstitutional by the Supreme Court. All that the Supreme Court held unconstitutional was subsection (s) of section 75.

This bill has for its object and purpose, first, the clarification of section 75, and the addition of a new subsection (s), in place of the subsection (s) held unconstitutional. The new subsection (s) in this bill has been written so as to conform to the decision of the Supreme Court. The Judiciary Committee has considered same, and feels that it meets with the requirements of that decision.....

We shall first, however, discuss the amendments to section 75, other than the new subsection (s). These other amendments are largely clarification, and have become necessary because of the diverse rulings and holdings of the various United States district courts in the construction of section 75. Some of these courts have held that the farmer debtor could not take advantage of the act after foreclosure sale, and during the period of redemption. Some of these courts have refused to permit the farmer in that position to file his petition, although under the law of his State he was in possession, entitled to rents and profits, and in full control of the property, and could redeem it within the period allowed.

Again, other courts have held that the farmer could not take advantage of the act during the period of a moratorium established by a State, while others have held that the debtor could not take advantage of the act after sale, but prior to confirmation, although in all of these cases if the debtor had

the money, and were in a position to pay, he could redeem, and save the property.

It is clear that these courts are reasoning too technically, and have failed to carry out the intention of Congress, which was to protect the farmer's home and property, and at the same time to protect the creditor. On the other hand, other courts have held just the opposite, and have given full protection, and carried out the intent of Congress. Under this condition, we think it is admitted by all that there should be uniformity.....

The amendment to subsection (n) in fact construes, interprets, and clarifies both subsections (n) and (o) of section 75. By reading subsections (n) and (o) as now amended in this bill, it becomes clear that it was the intention of Congress, when it passed section 75, that the farm debtor and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer, prior to confirmation of sale, during the period of redemption, and during a moratorium; and that no proceedings after the filing of the petition should be instituted, or if instituted prior to the filing of the petition, should not be maintained in any court, or otherwise. Yet, as we have seen, there have been a multiplicity of different holdings and conclusions reached by different district courts on this subject. The amended subsection (n) clarifies, construes, and interprets the intent of Congress, so as to bring about uniform decisions and rulings by the courts in the future. There is nothing new in subsection (n) except that it more clearly ex-

presses the original intent of Congress, as to who shall be entitled to the benefits of section 75.....

We must not lose sight of the fact that the only farmer who can take advantage of this act must be a bankrupt. A bankrupt is a financial wreck. The question of interest and profits is not considered in bankruptcy proceedings. The question is one of salvaging and saving what can be saved out of the wreck, without further wrecking the individuals involved. In legislating on this subject, it is just as much the duty of Congress to consider the unfortunate debtor as to consider the unfortunate creditors. It is for Congress, in its discretion, to decide how this shall be done.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

Nos. 715 and 716

JAMES M. WRIGHT,

Petitioner,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

SAMUEL E. COOK,
WILLIAM LEMKE,
Counsel for Petitioner.

HOMER E. BAILEY,
WALTER L. CLEMENTS,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

Nos. 715 and 716

JAMES M. WRIGHT,

Petitioner,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY.

PETITIONER'S REPLY BRIEF.

Ultimate Question.

The sole and only question in this case is whether subsection (n) and (s) of Section 75 of the Bankruptcy Act are still constitutional—whether the *Robert Page Wright* case, 300 U. S. 440, or the *Lowmon* case (C. C. A. 7th), 79 F. (2d) 887, controls as to constitutionality. The question is whether Congress in legislating on the subject of bankruptcies has the power to place *all* of the bankrupt's property, including the *equity or right of redemption,* under the *exclusive jurisdiction* and *control* of a court of bankruptcy—a Federal court sitting as a court of equity.

Argument.

It is with keen regret that we realize that a few of the lower courts seem to be unable to comprehend that Congress, during the depression and recession, is equally concerned with the welfare of the debtor and creditor—unable to comprehend that from now on Congress intends to give equal protection to both debtor and creditor. This in the interest of our Nation's welfare and within the limitations of the Constitution.

We will concede that in the past, Congresses as well as State Legislatures were more concerned with the protection of the creditors than with the unfortunate debtors—but that is the old school of thought. Experience and the self-preservation of this Nation has taught Congress that the homes of a Nation, including its farmers, must be preserved if the Nation is to continue, grow and prosper.

Fortunately—in case of a financial wreck—under the bankruptcy power of the Constitution and the decisions of this Court, Congress has ample power to conserve the estate and protect the mutual rights of both the debtor and creditor. It has power to stay the hand of greed that would wreck and destroy and to salvage the wreckage for the ultimate benefit of both.

Res Judicata.

It is our contention that the *Lowmon* case (C. C. A. 7th) 79 F. (2d) 887, was in fact before this Court and reversed in its decision in the *Robert Page Wright* case, 300 U. S. 440. We come to this conclusion because in the petition for the writ of certiorari in that case one of the reasons set forth in the petition for the writ was that there was a diversity of decisions among the Circuit Courts. The *Lowmon* case was one of these diversities of decisions. It held both sub-

sections (n) and (s) of the Frazier-Lemke act unconstitutional because, as stated in the opinion, these two sections extended the right of redemption beyond the period fixed by the State.

Justice Brandeis in the opinion of this Court in the *Robert Page Wright* case says:

> "The question for decision is whether section 75, subsection (s), of the Bankruptcy Act, as amended by the new Frazier-Lemke Act, August 28, 1935, c. 792, 49 Stat. 943-945, is constitutional. In this case, the Federal court for western Virginia (see In re Sherman, 12 Fed. Supp. 297) and the Circuit Court of Appeals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. Lafayette Life Insurance Co. *v.* Lowmon, 79 F. (2d) 887 (Seventh Circuit); United States National Bank of Omaha *v.* Pamp, 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. Dallas Joint Stock Land Bank *v.* Davis, 83 F. (2d) 322. *Because of this conflict and the importance of the question, we granted certiorari.*"

In other words, the *Wright* case came before the Supreme Court after the Frazier-Lemke Act had been held unconstitutional by the Circuit Courts of Appeals of the Fourth, Seventh and Eighth Circuits and held constitutional by the Circuit Court of Appeals of the Fifth Circuit. Justice Brandeis said: "*Because of the conflict and the importance of the question, we granted certiorari.*"

The court by this statement must have meant that it granted the writ in order to remove the conflict. The *Lowmon* and the *Pamp* cases were the cause of the conflict. To say that the question in the *Lowmon* and *Pamp* cases was not before the Supreme Court is absurd. The intent of the Supreme Court was to restore uniformity in the decisions and that could not be accomplished except by removing the

conflict of opinions. These, with other cases, were the cause of the conflict. *The holding in the Lowmon, Pamp and other cases had to be rejected in order to bring about uniformity. They were rejected by being reversed.* The Supreme Court upheld the *Davis* case decided by the Circuit Court of Appeals of the Fifth Circuit, 83 F. (2d) 322.

How could the Supreme Court have held the Frazier-Lemke Act, subsection (s) or any other part of the Act constitutional *with the Lowmon and Pamp cases unreversed?* It is true the *Lowmon* case was not the case appealed to the Supreme Court, but it was in fact reversed by the Supreme Court. *The Supreme Court did not approve the law as stated in the Lowmon case or the Pamp case. It condemned it by holding that the Act was constitutional. It ironed out the conflict.*

In addition may we suggest that in the *Robert Page Wright* case Judge Parker of the Fourth Circuit based his decision, in holding the new Frazier-Lemke Act unconstitutional, largely upon the *Lowmon* and the *Pamp* cases. In other words, the *Pamp* case followed the erroneous decision of the *Lowmon* case and Judge Parker followed the erroneous decisions of both of these cases, and all three Circuit Courts were reversed by the Supreme Court when it held the Frazier-Lemke Act constitutional in the *Robert Page Wright* case.

May we also suggest that in the *Wright* case, counsel for respondent, in their brief before the Supreme Court on pages 24 and 25, discussed the *Lowmon* case and the *Pamp* case *and relied upon them as authority that the Frazier-Lemke Act was unconstitutional.* Again, counsel for appellant, Robert Page Wright, in their brief on pages 59-63, discussed and criticised the decision of the *Lowmon* case and the *Pamp* case.

Respondent in the case at bar forgets that Section 75 of the Bankruptcy Act of 1898, including subsections (n) and (s), must not be confused with State acts. It is an Act passed by the Congress of the United States on the subject of bankruptcy—passed under the grant of power given it by the Federal Constitution. *"Congress shall have power * * * to establish * * * uniform laws on the subject of bankruptcies throughout the United States,"* and *"to make all laws which will be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof."* (U. S. Constitution, Art. I, par. 8.) Again,

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Article VI.

The Federal Constitution and laws made in pursuance thereof are the supreme law of the land—not the Constitution or the laws of Indiana. On the subject of bankruptcy, *the Constitution vests full and complete, not only partial, legislative power in Congress. Any State law must give way to the national law. That is the mandate of the Constitution. Wright* v. *Vinton Branch of Mountain Trust Bank*, 300 U. S. 440; *Continental Ill. Nat. Bank and Trust Co.* v. *Chicago, Rock Island and Pacific Ry.*, 294 U. S. 648; *Campbell* v. *Alleghany Corporation*, 79 F. (2d) 947; *Hanover National Bank* v. *Moyses*, 186 U. S. 181; *State* v. *Superior Court of King County*, 45 L. R. A. 177; *Sturges* v. *Crowninshield*, 4 *Wheat.* 122.

Constitutionality.

Just how the court below in the case at bar can still insist that subsections (n) and (s) of Section 75 of the Bankruptcy Act are unconstitutional is more than we can understand. The respondent in its brief rehashes all of the arguments made in the *Robert Page Wright* case. It talks about five rights in Indiana and the laws of Indiana fixing the right of redemption, the relationship of debtor and creditor, apparently forgetting that the relationship of debtor and creditor has nothing to do with the case. The question is whether or not the right or equity of redemption is a property right—is in fact property? If it is then the Federal Court takes jurisdiction.

Respondent should have asked this Court to reconsider its decision in the *Robert Page Wright* case, in which the *Lowmon* case was in fact reversed. We concede that the court may reconsider the constitutionality of Section 75. But we do not believe that there is any occasion for it. *We feel that that decision is sound and that Section 75 is still constitutional, the erroneous decision of the lower court in the Lowmon case and the case at bar notwithstanding.*

If this Court should reconsider its decision in the *Robert Page Wright* case, then may we suggest to the court that it reread our brief in that case, No. 530, October Term, 1936, because there we answered every argument of the respondent and since the respondent in this case simply rehashes those arguments we feel that our brief in that case answers every argument advanced by the respondent in the present case.

Equity of Redemption.

The right or equity of redemption is a property right. It is property. It has value and Congress intended by the enactment of Section 75 to give the sole jurisdiction of all

the property, including the right or equity of redemption, to the Court of Bankruptcy—a Court of Equity. No one can read subsections (n), (o), (p) and (s) and come to any other conclusion but that Congress intended that the right or equity of redemption should come under the absolute and sole jurisdiction of the Federal courts.

Under Section 75 of the Bankruptcy Act the Bankruptcy Court, sitting as a Court of Equity, can control and does control the period of redemption, the same as any other property right. *When a person becomes a bankrupt, all contracts and obligations are merged into the bankruptcy proceeding, including the equity or right of redemption.* The court assumes full and complete jurisdiction over all of the bankrupt's property.

> "For the court to afford the relief which the section as amended contemplates, it is necessary that the exclusive and paramount jurisdiction of the court over the property of the bankrupt be maintained; and there can be no question but that the provisions of subsections (n) and (o) apply as well to proceedings continued under subsection (s) as to proceedings under the other provisions of section 75. * * * And we do not think that the right to stay proceedings in the State court is precluded because a sale has taken place in foreclosure proceedings if there has been no confirmation of the sale." Bradford *v.* Fahey, 76 F. (2d) 628 (C. C. A. 4th).
>
> "A trustee in bankruptcy takes property in the same condition in which the bankrupt held it." Humphrey *v.* Tatman, 198 U. S. 91. "It is the general rule that the equity of redemption of mortgaged property passes to the trustee, and he may take and retain actual possession of the property. This is true even though the transaction takes the form of a trust deed instead of a mortgage." Gilbert's Collier on Bankruptcy, 4th Edition 1197; In re Jersey Island Packing Co. (C. C. A. 9th), 14 Am. B. R. 689.

"Property is *nomen generalissimum,* and extends to every species of valuable right and interest, including real and personal property, easements, franchises, and other incorporal hereditaments," 179 U. S. 141. "The right to redeem from a chattel mortgage is a right of property passing to the trustee of the bankrupt mortgagor." James B. Drake & Sons *v.* Nickerson, 121 A. 86.

"The right to redeem from a mortgage being a right possessed by one person of enforcing a claim against another, is "property" as respects the due process of law clause in the Constitution." Mooney *v.* Miller, 195 N. Y. S. 437. "The right of redemption from mortgage foreclosure as given by Code 1907, Sec. 5746, is transferable either before or after foreclosure and gives a property right under definition of property as right to possess, use, enjoy, sell and dispose of a thing." Petterson *v.* Holmes, 202 Ala. 115.

"The jurisdiction of bankruptcy court attaches on filing of petition for agricultural compositions and extension, and thereafter power of bankruptcy court is exclusive and paramount as to all bankrupt's property not in possession of some other court (Bankr. Act, Section 75 (n). * * * A farmer's proceedings for agricultural compositions and extensions were not dismissible as against mortgages who, after confirmation of foreclosure sale, held certificates of purchase, where farmer was still in possession of land, deeds had not been issued to purchasers, and District Judge had entered order approving filing of petition, and, if there was good reason why land could not be administered in bankruptcy court, Bankruptcy Act provided a remedy to true owner (Bankr. Act Sec. 75 (n-p), 11 U. S. C. A., Sec. 203 (n-p)." Syllabus. Wilcons *v.* Penn Mut. Life Ins. Co. et al. (C. C. A. 10th C.) 91 F. (2d) 417; Heldstab *v.* Equitable Life Assur. Soc. of U. S. et al. (C. C. A. 10th C.) 91 F. (2d) 655.

"We conclude that as the sale had not been confirmed at the time of filing the petition, appellant's equity of redemption had not been barred, and that it constituted

"property" which was subject to the jurisdiction of the Federal court under subsection (n). The foreclosure proceedings and the proceedings for sale thereunder were therefore stayed by the operation of subsection (o). * * *

"The debtor was clearly entitled to a restraining order to prevent the sale being confirmed and his equity of redemption being cut off before the proceedings in the Federal court had been consummated. Hence the injunction should not have been dissolved.

"The court is informed that subsequent to the vacation of the restraining order the sale was confirmed. This fact does not appear in the record; but in any event, under the mandatory provisions of subsection (o), all proceedings in the foreclosure action, including sale, were stayed after the filing of the debtor's petition, and were of no effect." Hoyd *v.* Citizens Bank of Albany Co., 89 F. (2d) 105.

"Upon adjudication of bankruptcy, title to all the property of the bankrupt, wherever situated, vests in the trustee as of the date of filing the petition in bankruptcy. The bankruptcy court has exclusive jurisdiction, and that court's possession and control of the estate cannot be affected by proceedings in other courts, State or Federal. Isaacs *v.* Hobbs Tie & T. Co., 282 U. S. 734, 737, and cases cited. Such jurisdiction having attached control of the *administration of the estate cannot be surrendered even by the court itself. Id.*, 739. *'The filing of the petition is a caveat to all the world and in fact an attachment and an injunction.'* May *v.* Henderson, 268 U. S. 111, 117." Gross *v.* Irving Trust Co., 289 U. S. 342.

In Re Argyle versus In re Lowmon.

The Circuit Court of Appeals of the 7th Circuit has been on both sides of the fence in passing upon the jurisdiction of Federal courts during the period of redemption after the sale under foreclosure proceedings. In passing upon Sections 77 and 77B of the Bankruptcy Act, relating to rail-

road and corporation reorganization, that court has given a very liberal construction to Acts of Congress. In construing Section 77B it held that the right or equity of redemption was a property right affecting a remedial right and therefore came under the jurisdiction of the Federal Courts. It took property from a receiver under a State court and gave it to the trustee in bankruptcy.

But in passing upon Section 75 of the same Act, relating to agriculture, that Court lost its liberalness and gave a strict construction—a construction inconsistent with its liberal construction of Sections 77 and 77B. It there held that as far as Section 75 extended the period of redemption—it was unconstitutional. It forgot that the right of redemption was a property right. It forgot that extending the period of redemption affected a remedial right and not a substantive right. We cannot concede that under the Bankruptcy Act a liberal construction should be given for railroads and other corporations and a strict construction for human beings—farmer-debtors.

> "It must be conceded that the right of redemption is a property right and is therefore an asset. This appellants do not deny, but they contend that section 210 of the Illinois Revenue Act, which was in force at the time of the tax sale, limited the redemption period to two years, and that that section was adopted by section 253, *supra*, under which the sale was made, and that, therefore, the amendatory Act of July 13, 1933, *supra*, did not operate to extend the redemptive period. We think that conclusion is not sound. The amendatory act merely affected a *remedial right*, and its enactment was clearly within the power of the Legislature. * * * We hold, therefore, that the bankrupt's right of redemption had not expired when the petition for reorganization was filed, and that that right existed under amended section 210 of the Illinois Revenue Act until the execution of the deed. * * *

"It was here conceded that since the issuance of the certificate of sale to Cook County, the relation of debtor and creditor no longer existed, with respect to the judgment for taxes, between it and the bankrupt and its trustee. Since that time the bankrupt had a mere right of redemption, and the trustee has no greater right." *In re* Argyle-Lake Shore Bldg. Corporation, 78 F. (2d) 491.

"The constitutional grant of authority is not conditional nor limited, save that its laws be uniform throughout the United States. * * *

"Surely, we are justified in giving to the amendment a liberal construction, one that is consonant with the purposes of this remedial legislation. * * * How could a plan of reorganization be perfected unless the court restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?" Continental Illinois Nat. Bank & Trust Co. *v.* Chicago, R. I. & P. Ry. Co., 72 F. (2d) 443, (C. C. A. 7th).

"Our conclusion is that the restraining order is an exercise of authority on the part of the court which was necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of a power which was incident to those expressly conveyed by Congress to the court. The proceeding involved no adversary contest *but merely the pursuit of a remedy.*" Continental Illinois Nat. Bank & Trust Co. *v.* Chicago, R. I. &. P. Ry., 72 F. (2d) 443, (C. C. A. 7th).

"It would seem from these decisions, rather clear, that the highest court of Illinois defines the estate of the owner of an equity of redemption both before and after sale, until the time of redemption expires, as exactly the same. * * * Consequently, I conclude that the equity of redemption of the bankrupt in this case was a property right which in the ordinary course of procedure he would have lost had he not filed his petition in this court prior to the expiration of the period provided.

"Subdivision (n) of section 75 of the Bankruptcy Act (11 U. S. C. A. Sec. 203 (n) provides that the filing of petition for relief under section 75 shall subject the farmer and his property wherever located to the 'exclusive jurisdiction of the court.' * * *

"It follows therefore that, when this debtor, in pursuance of the act of Congress giving him the right so to do, filed his petition that jurisdiction of all his property be taken over by this court, it became the court's duty, under the mandate of Congress, to exercise 'exclusive jurisdiction.' Such is the law as made by the Congress, and that it is within the constitutional power of Congress the Supreme Court has clearly stated in Isaacs *v.* Hobbs Tie & Timber Co., *supra*, and Gross *v.* Irving Co., *supra.*" *In re* Duffy, 9 F. Supp. 166, (D. C. Ill.). See also *In re* Rank 9 F. Supp. 171, (D. C. Ill.).

Power to Extend Period of Redemption.

The power to extend the period of redemption or the period in which to confirm a sale has always existed in a court of equity. A foreclosure proceeding is a proceeding in equity. A bankruptcy proceeding is a proceeding in equity. Courts of equity did not only originate the right of redemption, but have always protected it. They have extended the period under certain circumstances. They have on occasions, to avoid harshness, extended the period without legislative sanction.

"He (the purchaser) is entitled to only his money, with interest * * * even though he gets it a few days before or after the year of redemption. He has no right to avail himself of the law to get something for nothing, or to speculate on the misfortunes of his debtor.

"To mitigate the asperities of the law and to grant relief against forfeitures, penalties, accidents, and mistakes,—this has always been the special function and the duty of the courts of equity." Wade *v.* Major, 36 N. D. Reports 331.

During this depression and recession some twenty-six State Legislatures, at one time or another, granted *moratori* and extended the period of redemption. This in spite of the prohibition by the Federal Constitution that *"No State shall pass any * * * law impairing the obligation of contracts."* Yet these laws have been held constitutional by this Court under the police power of the States and for the further reason that such laws *simply affected remedial rights* and did not impair substantial rights. *Home Bldg. & Loan Association* v. *Blaisdell,* 290 U. S. 398.

It is conceded by all that Federal laws enacted under a constitutional grant of power are *"the supreme laws of the land; and the Judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."*

Under section 75 of the Bankruptcy Act, Congress gave full and complete power over all of the bankrupt's property to the courts of bankruptcy. Under that section foreclosure of mortgages may be stayed. Executions and evictions by judgment creditors may be stayed. The enforcement of all debts, secured or unsecured, may be stayed for a period of three years under the control of the court. By the express language of the Act the period of the right or equity of redemption may be stayed. *These are all but remedial rights.* It is not the taking of property and we maintain that all have had the sanction of this Court. *Bradford* v. *Fahey,* 76 F. (2d) 628, (C. C. A. 4th); *Bank* v. *Pamp,* 77 F. (2d) 9.

> "We have seen that the power of Congress over the subject of bankruptcy is total and absolute, with the single limitation, that the laws must be uniform; * * * The exception itself in favor of these rights shows that Congress intended to occupy the whole ground. Everything which is not excepted passes under the act. The rights themselves, therefore, being the only matters which are excepted, the mode of enforcing those

rights by an application to the State courts is not saved. Not being excepted, it is gone. If Congress had intended that the State courts should retain their jurisdiction over mortgages, and have the power of foreclosing them, the law would have said so. * * * But the bankrupt is obliged to make a return of all his property of every kind, under the penalty of losing the benefit of the law. He must include his mortgaged property, and the whole must be adjudicated by one head." Houston et al. *v.* City Bank of New Orleans, 6 How. 486.

"The title and right to possession of all property owned and possessed by the bankrupct vests in the trustee as of the date of the filing of the petition in bankruptcy. * * * When this jurisdiction has attached the court's possession cannot be affected by actions brought in other courts. White *v.* Schloerb, 178 U. S. 542; Murphy *v.* Hofman Co., 211 U. S. 562; Dayton *v.* Stanard, 241 U. S. 588. This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; * * * Thus, while valid liens existing at the time of the commencement of a bankruptcy proceeding are preserved, it is solely within the power of a court of bankruptcy to ascertain their validity and *amount and to decree the method of their liquidation. Ex parte* City Bank of New Orleans, 3 How. 292; Houston *v.* City Bank of New Orleans, 6 How. 486; Ray *v.* Norseworthy, 23 Wall. 128; *In re* Wilka, *supra;* Nisbet *v.* Federal Title & T. Co., 229 Fed. 644. The exercise of this function necessarily forbids interference with it by foreclosure proceedings in other courts, which save for the bankruptcy proceeding would be competent to that end." Isaacs *v.* Hobbs Tie & T. Co., 282 U. S. 734.

"State laws in conflict with laws of Congress on subject of bankruptcies are suspended, but only to the

extent of actual conflict with system provided by the Bankruptcy Act." Chicago Title & Trust Co. *v.* Forty-One Thirty-Six Wilcox Bldg. Corporation, 58 S. Ct. 125.

"The stay under judicial discretion, as to enforcement of claims provided by the statute relative to agricultural extensions and compositions in the bankruptcy court, does not take property without due process and is constitutional. Bankr. Act. Sec. 75 (o), 47 Stat. 1471-1473, 11 U. S. C. A. Sec. 203 (o)." Adair *v.* Bank of America Nat. Trust & Savings Ass'n, 58 S. Ct. 594.

"The provisions of the statute, relating to agricultural compositions or extensions in the bankruptcy court for the exercise by the court of such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors, look toward the maintenance of the farm as a going concern and afford authority in a proper case for the continuance of the operations of the farm. Bankr. Act. Sec. 75 (e, n), 47 Stat. 1471-1473, 11 U. S. C. A. Sec. 203 (e, n)." Adair *v.* Bank of America Nat. Trust & Savings Ass'n, 58 S. Ct. 594.

Relationship of Debtor and Creditor.

The court below seems to be confused because it claims that after mortgage foreclosure sale the relationship of debtor and creditor no longer exists. May we ask in all frankness what that has to do with the case? The question is not the relationship of debtor and creditor. The question is, is the right or equity of redemption a property right? If so then the bankruptcy court has jurisdiction.

"The purchaser at a mortgage foreclosure sale does not become the absolute owner of the property. At best he gets but a qualified title that may or may not ripen into a title. The equitable title, and in many States the legal title, remains in the mortgagor." 19 R. C. L. Right and Equity of Redemption Secs. 296 and 298, pages 500-501. *In re* Kalina, 9 F. Supp. 170 and *In re* Argyle-Lake Shore Bldg., 78 F. (2d) 491.

The court deals with the farmer-debtor's property, first, with a view of conserving it and rehabilitating the farmer, and secondly, with a view of conserving it for the creditor. The Court takes complete control of all the debtor's property *regardless of any relationship of creditor and debtor.* Congress directs the court in specific language to take control of the period of redemption and to extend it. The passing of the bankrupt's property into the hands of the court does not rest upon the relationship of debtor and creditor. *It has nothing to do with that. The question is not whether the relationship of debtor and creditor exists, but rather, what is property, and the right of redemption is property and it passes to the court.*

Protects Purchaser.

It is argued that since some State courts have held that after sales the relationship of debtor and creditor no longer exists, a purchaser at a foreclosure sale would be deprived of his property if the period of redemption were extended. It is stated that his property would have to be resold.

That is an inaccurate statement and our answer is that the purchaser in such a sale is only a qualified or prospective owner. He is not the owner of the property. *It belongs to the bankrupt.* Subsection (n) in plain words says, "In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption *shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section.*"

There is no necessity for an additional sale. All that this Act does is to *extend the time of redemption for three*

years, or such time as the farmer may need to refinance himself within the three years, and when he does that he will have to pay the purchaser the amount that he bid the property in for.

It is, however, argued that during this period the purchaser would not be able to receive the rent. This is another erroneous conclusion, because the Act itself contemplates that in this case the purchaser shall receive the rental. He has a qualified ownership in the land and therefore would be entitled to the rental.

The Bankruptcy Court is a court of equity. Under its equitable jurisdiction the court has ample power and opportunity to carry out the express intent of Congress under equitable terms. There is no room here for quibbling over technicalities. The plain intent of subsections (n) and (s) of section 75 is that the purchaser, at a redemption sale, should be treated the same as the mortgagee and is entitled to the rental. That appears plainly by reading subsections (n) and (s) together and by reading the Judiciary Committee report.

Purchaser No Saint.

There is nothing sacred about a purchaser at a foreclosure sale. He generally is looking for a bargain at the expense of the mortgagor. In some localities he is even looked upon with disfavor as one who profits by the misery and misfortune of others. When he purchases at a mortgage foreclosure sale, he is presumed to know not only the laws of his State, but the laws of the United States—the bankruptcy laws. He is presumed to know that the Federal Constitution and laws supersede State constitutions and laws. Preferential sales or gratuitous and fraudulent transfers made within four months can and have been set aside, State law or not State law. So can the period of redemption be extended by Congress through a court of bankruptcy regardless of State law. *In re* Dickinson, 9 F. Supp. 227.

Side Issue.

Since this case reached this Court an attempt is being made by Respondent to inject a side issue. It now claims that Appellant did not have title to 200 out of the 280.31 acres of land, here in question, at the time of filing his petition under section 75. It forgets that the question of title is not before this Court because it never was raised or tried in the lower court. The Petitioner included the 200 acres of land in his schedule and under oath stated that he was the owner of the 200 as well as of the 80.31 acres. The record shows conclusively that he has at all times had and now has possession, lives on and farms all of this land and under oath claims ownership. R. 2-9.

Respondent never raised the question of title in the lower court. Therefore, it is in no position to raise it in this Court. The record shows that the question of title was never raised or tried in the lower court. But, says Respondent, there were deeds on record by which Appellant apparently deeded 200 acres out of the 280.31 acres of this land to members of his family and that there are quit claim deeds by these same members of his family deeding said land back to Appellant. Appellant under oath in his amended schedule claims title and since that issue was not raised in the lower court it is not now before this Court. R. 2-9.

If Respondent had raised the issue of title in the lower court he perhaps would have discovered that Appellant made these deeds to his children to take the place of a will. Respondent would have discovered that there never was any consideration for these deeds and that the deeds in fact were not intended as a conveyance at all, but simply as an instrument to take effect after death.

It is not necessary for us to discuss this subject further. This issue was not raised in the District Court nor in the

Circuit Court of Appeals. The decision of the Circuit Court of Appeals is not on the question of title. In fact, the Circuit Court of Appeals admits that Petitioner, at the time he filed his petition, had the right to redeem this property if subsections (n) and (s) of section 75 were constitutional. The lower court went astray on that question in the *Lowmon* case and it followed the *Lowmon* case in the present case and repeated its error in spite of the decision of the Supreme Court to the contrary in the *Robert Page Wright* case.

In its opinion the lower court says:

> "Hence, at the time of the enactment on August 28, 1935, the only interest that debtor had in the mortgaged property was a right to redeem the 200 acre tract, provided he did so on or before July 20, 1936. Indeed, that was all the interest he had when he filed his amended petition on October 11, 1935, unless the amendment of August 28, 1935, operated to extend his right of redemption.
>
> "In the *Lowmon* case we particularly discussed subsection (n) of Section 75, and held it unconstitutional to the extent that it authorized an extension of the period of redemption. We also referred to the first sentence in subsection (s) (2) of Section 75 which in effect commands the court to carry out that authorization by extending the time of redemption for a period of three years, and we held that portion of it unconstitutional. In this sense our decision was like those referred to in the Fourth and Eighth Circuits, and unlike the one in the Fifth Circuit, for we held a portion of subsection (s) unconstitutional."

Conclusion.

In conclusion may we state that cases under the Bankruptcy Act prior to the enactment of Sections 73, 74, 75, 76, 77 and 77B are no guide or authority. This because in the sections just mentioned the power of the bankruptcy

court and the method in dealing with the bankrupt's estate are largely increased. The courts must now be guided by the Bankruptcy Act as amended by these sections and not by decisions that construed the act prior to this action of Congress.

During the depression and recession Congress—legislating in the interest of the Nation—saw fit to pass the sections referred to. It did this because it felt they were essential for the preservation of the Nation. This Court has approved that legislation and has given it a broad and liberal interpretation so as to effectuate the intent of Congress within Constitutional limitations. *Continental Ill. Nat. Bank and Trust Co.* v. *Chicago, Rock Island, and Pacific Ry.*, 294 U. S. 648; *Robert Page Wright* v. *Vinton Branch of Mountain Trust Bank*, 300 U. S. 440; *Adair* v. *Bank of America National Trust and Savings Association*, 303 U. S. —.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

Nos. 715 and 716

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY
Respondent and Appellee Below.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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OPINION BELOW.

The petitioner's conclusion, as to what the U. S. Circuit Court of Appeals for the Seventh Circuit held, is inaccurate. We herewith set forth the opinion of the Circuit Court of Appeals in full. Same is reported in 91 Fed. (2d) 894.

SPARKS, Circuit Judge.

These appeals involve bankruptcy proceedings under section 75 of the Bankruptcy Act (as amended, 11 U. S. C. A. § 203) in which appellant was the debtor. The first appeal is from an order of the District Court, on December 14, 1936, overruling the debtor's petition to reveiw the decision and recommendations of the Conciliation Commissioner and approving the latter's recommendation that certain real estate listed as assets be stricken from the debtor's schedules. The second appeal is from an order of the court, on December 31, 1936, denying the debtor's application for permission to amend his schedules by reinstating as assets therein, the real estate theretofore stricken in Cause No. 6183.

The questions presented in both cases are practically the same and they arise out of the following facts: On October 1, 1925, the debtor was the owner of 200 acres of land in Jay County, Indiana. On that date he with his wife, Emma G., executed a mortgage upon this land to appellee to secure the payment of a note in the sum of $9,000. On the same day the debtor was the owner of an additional tract of land in the same county containing 80.31 acres, upon which appellee held a mortgage lien to secure the payment of a note for $3,000 executed by the debtor and his wife on October 1, 1925. These two tracts adjoined, constituting one farm.

On October 14, 1931, the debtor and his wife executed and delivered three separate warranty deeds to their two children and son-in-law for certain portions of the farm; that is to say,—to their son, Walter C. Wright, they deeded the 80.31 acre tract; to their daughter, Edna E. Coon, and her husband John E. Coon, they deeded separate 40-acre tracts, one to each, out of the 200-acre tract. On

the same day the debtor also executed and delivered to his wife a separate warranty deed for a third 40-acre tract out of the 200 acres. The consideration named in each deed was $1 and other consideration, the receipt of which was acknowledged. The deed to Walter C. Wright was made subject to appellee's mortgage thereon for $3,000; and the deeds to Edna E. Coon, her husband and her mother, were made subject respectively to a mortgage indebtedness of $2,500, $1,500, and $1,400 of the $9,000 mortgage indebtedness to appellee; however, there was no express assumption of such indebtedness by any of the grantees. The deeds of the children and son-in-law were duly recorded on the day they were executed, and the one to the debtor's wife was duly recorded on February 25, 1932.

On January 3, 1934, appellee instituted an action in the Jay Circuit Court of Indiana, against the debtor and Walter C. Wright to foreclose the $3,000 mortgage on the 80.31-acre tract. The debtor's wife was not joined in the action because in the meantime she had died. On June 9, 1934, a decree of foreclosure and order of sale was entered. On July 12, 1934, pursuant to the decree, the sheriff sold this tract to appellee and issued to it his certificate of sale therefor; and upon the expiration of the year of redemption, pursuant to the Indiana Statutes, the sheriff of Jay County issued his sheriff's deed therefor to appellee on August 2, 1935.

Prior to October 30, 1934, appellee filed its complaint in the Jay Circuit Court of Indiana, for personal judgment against James M. Wright, and for foreclosure of the $9,000 mortgage, against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright, and the Citizens Bank of Portland, Indiana. That cause was venued from Jay County to Adams County, Indiana, and

while it was pending on October 30, 1934, the debtor filed his petition in bankruptcy, under the Frazier-Lemke Act (section 75 (s), as added by Act June 28, 1934, 48 Stat. 1289, 11 U. S. C. A. § 203 note), in which he filed under oath a schedule of his property including therein the real estate which he had conveyed on October 14, 1931, to his wife and children and his son-in-law, amounting to 200.31 acres.

On April 13, 1935, Walter C. Wright, Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered to the debtor a quit-claim deed for the real estate which he had deeded to them, and to his wife who was then deceased.

On May 27, 1935, appellee recovered a personal judgment against the debtor in the Adams Circuit Court for $11,975.11 and a decree of foreclosure of its $9,000 mortgage which covered the 200-acre tract, 120 acres of which had been conveyed by three of the four deeds hereinbefore referred to. Pursuant to that decree, on July 20, 1935, the Sheriff of Jay County, in compliance with the applicable laws of Indiana, sold the fee simple of that real estate to appellee for $12,174.31, that being the highest and best bid received, and executed and delivered to it a certificate of sale. No one having redeemed the property within the year of redemption, the Sheriff of Jay County, upon presentation of the certificate by appellee on July 20, 1936, executed and delivered his sheriff's deed to appellee for the 200 acres described in the certificate.

On September 13, 1935, appellee instituted an action in the Jay Circuit Court, against Walter C. Wright and his wife Virgie M. Wright, for possession of the 80.31 acres. The debtor by leave of court was admitted as a party defendant, and answered that he had been duly declared a

bankrupt in the Federal Court and that the State Court, for that reason, was without jurisdiction. Judgment for possession and damages went for appellee, whereupon appellants appealed to the Supreme Court of Indiana, and the judgment was affirmed April 2, 1937. See *Wright et al.* v. *Union Central Life Insurance Co.*, 7 N. E. (2d) 206. On October 11, 1935, the debtor filed an amended petition in bankruptcy under the provisions of section 75 (s), as amended August 28, 1935 (11 U. S. C. A. § 203 (s)).

Both records in the appeals to this court were filed February 20, 1937. The cases were consolidated for hearing, and on June 3, 1937, appellee filed its motion and petition to dismiss the consolidated appeals. On June 11, 1937, appellant filed his verified petition for a temporary order without notice, restraining appellee, until notice could be given, and for a permanent order upon hearing, from enforcing the judgment which the Indiana Supreme Court had affirmed, for possession of the 80.31-acre tract. This court issued the order and continued it until June 25, and notified both parties that both appeals would be heard on their merits at that time, and that also all pending petitions and motions would be then heard.

On June 14, 1937, appellant filed his second paragraph of petition for a restraining order, and the merits and motions were submitted and presented on the appointed day.

All questions here presented by appellant are based upon subsection (s) of section 75, as amended by the new Frazier-Lemke Act, August 28, 1935, 11 U. S. C. A. § 203 (s).

Aside from this enactment it is obvious that the debtor had no interest in 200.31 of the 280.31 acres of the mortgaged property at the time he filed his original bank-

ruptcy petition on October 30, 1934, for he had deeded it to his wife, children and son-in-law more than three years before, and he did not again receive a deed for it until six months thereafter, which was nine months after the sheriff had sold the 80.31-acre tract, and within a very short time prior to the sale of the 200-acre tract under the foreclosure decree. At the time the debtor filed his amended petition for relief under the amended Act of August 28, 1935, appellee had received a deed from the sheriff for the 80.31-acre tract on August 2, 1935, and he held a sheriff's certificate of sale for the 200-acre tract, and under the Indiana law would have been entitled to a deed therefor on July 20, 1936, if there were no redemption. Hence, at the time of the enactment on August 28, 1935, the only interest that debtor had in the mortgaged property was a right to redeem the 200-acre tract, provided he did so on or before July 20, 1936. Indeed, that was all the interest he had when he filed his amended petition on October 11, 1935, unless the amendment of August 28, 1935, operated to extend his right of redemption.

It is contended by appellant that the amendment did so operate, not only to extend the time for redemption of the 200-acre tract, but also to void the deed for the 80.31-acre tract, and to extend the time for redemption of it. [1] In *Lafayette Life Insurance Company* v. *Lowmon*, 79 F. (2d) 887, we held that Congress had no power to extend the time for the redemption of land sold under execution, after that time had begun to run, that is to say after the sheriff's sale. That case did not involve the right of Congress, under its bankruptcy powers, to defer the foreclosure of a mortgage, or even a sale after a foreclosure, and those questions were not decided in that case. There the sale had been had and we thought, under

the laws of Indiana, which are rules of property in that State, that at the time Lowmon filed her petition in bankruptcy under section 75, the only interest she had in the property was her right to redeem. We did not question the right of the Bankruptcy Court to administer upon that right of redemption, but we thought that the Bankruptcy Court had no right, and that Congress had no power to bestow upon it such right, to enlarge the debtor's estate, which had been limited by the foreclosure and sale in compliance with the laws of Indiana. Certiorari was not sought in that case.

Confusion has arisen in this Circuit, however, with respect to the extent of the decision of the Supreme Court in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556, 558, 81 L. Ed. ——. It is contended by appellant that that case, in effect, overruled the *Lowmon Case* and sustained subsection (s) of section 75 as to all of its provisions. We disclaim any intention of not strictly following the rulings of the Supreme Court, but we can not accept appellant's interpretation of the extent of that decision. We do not understand that the question in the *Lowmon Case* was before the Supreme Court in the *Wright Case.* In the latter case there had been no sale and the period of redemption had not begun. In the *Lowmon Case* there had been a sale and the period of redemption was running, in fact it expired two weeks after the petition was filed. Appellant's contention is based first upon the first paragraph of the Wright decision in which the *Lowmon Case* is referred to. After stating that the question for decision was whether section 75, subsection (s) as amended, was constitutional, the Court said: "In this case, the federal court for western Virginia (see *In re* Sherman [D. C.] 12 F. Supp. 297) and the Circuit Court of Ap-

peals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. *Lafayette Life Insurance Co.* v. *Lowmon,* 79 F. (2d) 887 (Seventh Circuit); *United States National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. *Dallas Joint Stock Land Bank* v. *Davis* (C. C. A.) 83 F. (2d) 322. Because of this conflict and the importance of the question, we granted certiorari." 299 U. S. 537, 57 S. Ct. 312, 81 L. Ed. ——. In no other part of the opinion are these cases referred to.

We interpret this paragraph as being merely a basis for granting certiorari. It is true that we suffer considerable embarrassment from the fact that in the *Wright Case* the court refers to the *Lowmon Case* as being a decision like unto those of the Circuit Courts of Appeals in the Fourth and Eighth Circuits, and the District Court of the Fourth Circuit, and contrary to the one in the Fifth Circuit. We had thought that the question decided in the *Lowmon Case* was not the same as that decided in the other cases referred to. In the *Lowmon Case* the sale had been made and the period of redemption was running. In all other cases cited, and in the *Wright Case,* the sales had not been made and they were still dealing with remedies for the protection of the title to property against foreclosure or sale, while that title was yet in the debtor. There was a sale in the *Pamp Case,* but it had not been confirmed, and from the opinion we assume that was required under the laws of Nebraska. Under the Indiana laws, however, no confirmation by the court of a sheriff's sale or deed for land sold under execution is required. In the *Lowmon Case* and in this case the court was not dealing with remedies against foreclosure and sale, but with property rights which came into existence when the

sales were made by virtue of the laws of Indiana. The notes and mortgages were not in existence; they were merged into the decree of foreclosure and were cancelled.

In the *Lowmon Case* we particularly discussed subsection (n) of section 75, and held it unconstitutional to the extent that it authorized an extension of the period of redemption. We also referred to the first sentence in subsection (s) (2) of section 75 (11 U. S. C. A. § 203 (s) (2)) which in effect commands the court to carry out that authorization by extending the time of redemption for a period of three years, and we held that portion of it unconstitutional. In this sense our decision was like those referred to in the Fourth and Eighth Circuits, and unlike the one in the Fifth Circuit, for we held a portion of subsection (s) unconstitutional. The Supreme Court in the *Wright Case* did not say, unless by remote inference, that the facts in all the cases referred to were analogous, or that the questions presented were the same. Indeed they were not the same.

We base these conclusions upon the ruling in *Board of Trade of City of Chicago* v. *Johnson,* 264 U. S. 1, 44 S. Ct. 232, 234, 68 L. Ed. 533, where the court said: " * * * where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts" and also upon *Home Bldg. & Loan Ass'n* v. *Blaisdell,* 290 U. C. 398, 54 S. Ct. 231, 243, 78 L. Ed. 413, 88 A. L. R. 1481, where it was said: "Although the courts would have no authority to alter a statutory period of redemption, the [Minnesota] legislation in question permits the courts to extend that period, within limits and upon equitable terms." True, these decisions were prior to the enactment of amended subsections (n) and (s) of section 75 (11 U. S. C. A. § 203 (n, s)), but we think that makes no

difference. If the extension of the time of redemption must be considered as a remedial right instead of a fixed property right, then the bankruptcy court under its broad equitable powers would perhaps have the inherent power to extend the time without permissive Federal legislation. In the *Blaisdell Case* it was said that the courts had no authority to alter a statutory period of redemption, and the court based its decision on the permissive amendment of the Minnesota legislation. Hence we concluded that the right to extend the time of redemption was not considered of a remedial character, but was regarded as a property right to be governed by the state law under the ruling of the *Chicago Board of Trade Case, supra.*

These late expressions of the Supreme Court lead us to believe that it did not intend to declare a different doctrine in the *Wright Case,* especially since that question was not then before it. The question presented is of such importance that we feel it our duty to adhere to the ruling in the *Lowmon Case* unless and until the Supreme Court shall hereafter hold to the contrary upon that issue [2] It seems to us that if Congress has the power under the constitution to prolong or in any way limit the time of redemption as fixed by the laws of Indiana, for the purpose of increasing the estate of the debtor, or increasing his rights in property to which he has no title, or for any other purpose, then it would have the same right for the same purpose to alter the laws of descent of that state, or to permit federal construction of her transfer statutes contrary to the views of her own courts. We have never thought that such power was contemplated by the federal constitution, even under its broadest construction.

Appellant urges that the effect of the decision in the *Wright Case* upholds each and every provision of sub-

section (s). We think it upholds only those portions which were pertinent to the questions raised in that case, which did not include the right of the bankruptcy court to extend the time for redemption after that period had begun to run.

From what has been said we overrule appellee's petition to dismiss the consolidated appeals, and the restraining order is dissolved. There was no error in striking from appellant's schedule of assets the real estate here involved in cause No. 6183, nor was there error in denying appellant's motion to reinstate that real estate in his schedule of assets in cause No. 6184.

Decrees affirmed.

JURISDICTION.

Jurisdiction of this Court to issue certiorari is conceded by respondent.

QUESTIONS PRESENTED.

(1) Did subsection (s) of section 75 of the Bankruptcy Act, as amended by the Act of Congress, August 28, 1935 (Chap. 792, Sec. 6, 49 Stat. U. S. 942) operate to extend the time for redemption of the 200-acre tract, on which foreclosure had been completed, purchase of same had by appellee (respondent) and on which appellee had received sheriff's certificate of sale nine months prior thereto?

(2) Did the same Act of the Congress of U. S. operate to void the final sheriff's deed, after expiration of period of redemption, for the 80.31-acre tract, and to extend the time for redemption of it?

STATEMENT.

Involved in these proceedings are two adjoining tracts of land one of 200 acres and the other 80.31 acres, both in Jay County, Indiana. On October 1, 1925, the debtor (petitioner) was the owner of the 200-acre tract. On that date he with his wife, Emma G., executed a mortgage upon this land to respondent to secure the payment of a note in the sum of $9,000.

On the same day the debtor was the owner of an additional adjoining tract of land containing 80.31 acres, upon which the debtor and his wife had, on the same day, executed a mortgage of $3,000. This mortgage was likewise held by this respondent.

On October 14, 1931, the debtor (petitioner) and his wife, executed and delivered three separate warranty deeds to their two children and son-in-law for certain portions of the combined farm; in the following manner, to-wit: they conveyed to their son, Walter C. Wright, the 80.31-acre tract; to their daughter, Edna E. Coon and her husband John E. Coon, they conveyed separate 40-acre tracts, one to each, out of the 200-acre tract. On the same date the debtor (petitioner) executed and delivered to his wife a separate warranty deed for a third 40-acre tract, out of the 200-acre tract. Consideration and receipt thereof was set forth in each deed. The warranty deed to Walter C. Wright was made subject to respondent's mortgage thereon for $3,000; and the deeds to Edna E. Coon, her husband and her mother, were made subject respectively to a mortgage indebtedness of $2,500, $1,500 and $1,400 of the $9,000 mortgage indebtedness to respondent. All of the above deeds were duly recorded on the date of their execution, except the one to the

debtor's wife, which deed was recorded on February 25, 1932.

The respondent, the holder and owner of the mortgage on the 80.31-acre tract, instituted foreclosure proceedings on January 3, 1934, against the debtor (petitioner) and Walter C. Wright. The debtor's wife was not joined in the action because in the meantime she had died. On June 9, 1934, a decree of foreclosure and order of sale was entered. On July 12, 1934, pursuant to the decree, the Sheriff sold this tract to the mortgagee (respondent) and issued to it his certificate of sale therefor; and upon the expiration of the year of redemption, prescribed by the statutes of the State of Indiana, the sheriff of Jay County issued his sheriff's deed therefor to the mortgagee (respondent) on August 2, 1935.

Prior to October 30, 1934, the respondent instituted foreclosure proceedings against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright and the Citizens Bank of Portland, Indiana, of the $9,000 mortgage affecting the other adjoining tract. While this cause was pending on that date, the debtor (petitioner) filed his petition in the bankruptcy under the Frazier-Lemke Act (Section 75 (s), as added by Act June 28, 1934, 48 Stat. 1289, 11 U. S. C. A., Sec. 203, note), in which he filed under oath a schedule of his property, in which schedule he included the real estate, which he had conveyed on October 14, 1931, to his wife and children, and his son-in-law, aggregating 280.31 acres.

On April 13, 1935, Walter C. Wright, Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered to the debtor (petitioner) a quit-claim deed for the real estate which he had deeded to them, and to his wife who was then deceased.

On May 27, 1935, a decree of foreclosure was entered in the Adams Circuit Court, Indiana, in favor of the mortgagee (respondent) on its $9,000 mortgage and also a personal judgment against the debtor (respondent). These proceedings covered the 200-acre tract, 120 acres of which had been conveyed by three of four deeds before referred to. Under this decree, the sheriff of Jay County, Indiana, sold this tract to the mortgagee (respondent) for $12,174.31, that being the highest and best bid received, and executed and delivered to it a certificate of sale. Within the year of redemption, prescribed by the Statutes of Indiana, no one redeemed the property. Hence upon delivery to the sheriff of Jay County of the certificate of sale by the mortgagee (respondent), after the expiration of said year, the sheriff did on July 20, 1936 execute and deliver his sheriff's deed to the mortgagee (respondent) for the said 200 acres.

On September 13, 1935, respondent instituted an action in the Circuit Court of Jay County, Indiana, for possession of the 80.31 acres against Walter C. Wright and his wife, Virgie M. Wright. The petitioner, by leave of Court, became a party defendant and pleaded that he had been duly declared a bankrupt in the U. S. District Court for the Northern District of Indiana, Fort Wayne Division, and for that reason the State Court was without jurisdiction. The State Court entered judgment for possession and damages in favor of respondent. An appeal was taken by the petitioner to the Supreme Court of Indiana, and the judgment was affirmed April 2, 1937. *Wright et al.* v. *Union Central Life Insurance Co.*, 7 N. E. (2d) 206. On October 11, 1935, the debtor filed an amended petition in bankruptcy under the provisions of Section 75 (s) as amended August 28, 1935 (U. S. C. A., Sec. 203 (s)).

The period of redemption expired on the 200-acre tract

on July 20, 1936, and on that date, as heretofore set forth, this respondent received the sheriff's final deed. The debtor (petitioner) continued to hold possession and refused to surrender same. Writ of Assistance proceedings were brought by this respondent. The debtor claimed right to possession to this tract for a period of three years, pursuant to the Frazier-Lemke Act (Bankruptcy Act, Sec. 75 (s), as amended by Act of Congress, August 28, 1935, Sec. 6, 11 U. S. C. A., Sec. 203 (s)). Petition for Writ of Assistance was granted and debtor perfected appeal to the Supreme Court of Indiana. That court held that "the claim of the appellants to the benefits of the moratorium provision of the Frazier-Lemke Bankruptcy Act was decided in this Court adverse to their contention in the case of *Wright et al.* v. *Union Central Life Insurance Co.* (Ind. Sup.), 7 N. E. (2d) 206. The question there before the Court and the facts are the same as in the case at bar." The Court further held that "the appellants were not entitled to interpose, as a defense to the writ of assistance, matters which subsequently arose affecting possession of the land. The judgment of foreclosure determined the rights of the parties, and, when the appellants failed to redeem the property, their right of possession was forfeited." *Wright et al.* v. *Union Central Life Insurance Co.*, 10 N. E. (2d) series 726 (October 26, 1937).

The respondent calls attention of this Court to the statement of the petitioner that he has been in continuous possession of the combined tracts, nevertheless said petitioner has made no payments on the mortgage indebtedness, either principal or interest, for a period of more than six years. Nor has the petitioner made any payments on taxes during said period. Moreover no plan has ever been presented to the Conciliation Commis-

sioner to whom the cause was first referred by the U. S. District Court, Northern District of Indiana, Fort Wayne Division.

Reasons For Denying A Writ of Certiorari.

(1) At the time the debtor filed his original bankruptcy petition on October 30, 1934, he had no interest in 200 acres of the 280.31-acre tracts.

(2) At the time the debtor filed his amended petition on October 11, 1935, to avail himself of the benefits of Section 75, as amended under the new Frazier-Lemke Act, August 28, 1935, the period of redemption had expired as to the 80.31-acre tract and the mortgagee (respondent) was in possession of the sheriff's final deed. As to the 200-acre tract the respondent held the sheriff's certificate of sale and under the Indiana law would have been entitled to a final deed for same on July 20, 1936, unless the debtor redeemed same.

(3) There is no conflict between the instant case and this Court's decision in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556, 558, 81 L. Ed. .....

ARGUMENT.

I.

Petitioner has failed entirely to inform this Court that at the time he filed his original bankruptcy petition, on October 30, 1934, he had no interest in 200 acres of the 280.31 acres of encumbered property. (R. 6184. fol. 2, 22-33.) Same had previously been conveyed to his wife, children and son-in-law more than three years before. Petitioner did not again receive a deed thereto until six months thereafter. The conveyance of the 80.31 acres of the 280.31-acre tract to the petitioner occurred nine months after the sale by the sheriff of Jay County, Indiana, to the respondent. The conveyance of the 200 acres of said tracts to the petitioner occurred almost immediately before the sale under the foreclosure decree.

It is fundamental that no one can have the benefit of Section 75 unless he is the owner of a farm. We take it that no authorities need be cited to support this position.

II.

On October 11, 1935 the debtor filed his amended petition to avail himself of the benefits of Section 75, as amended under the so-called New Frazier-Lemke Act of August 28, 1935. The period of redemption had already expired as to the 80.31-acre tract (August 2, 1935), and this respondent was in possession of the sheriff's final deed. On the 200-acre tract the respondent held the sheriff's certificate of sale and under the Indiana law

would have been entitled to a final deed for same on July 20, 1936, unless there was a redemption by the petitioner.

The petitioner contends that by the filing of his amended petition on October 11, 1935, that Section 75, as amended under the Act of August 28, 1935, operated, *first,* to extend the time for redemption of the 200-acre tract and *second,* to void the final deed for the 80.31-acre tract, and to extend the time for redemption of it. (Point (m), p. 20, Petitioner's Motion for Writ of Certiorari.)

The petitioner has stated with considerable emphasis in support of his motion and petition for writ of certiorari that the case of *Lafayette Life Insurance Company* v. *Lowmon,* 79 F. (2d) 887, decided by the U. S. Circuit Court of Appeals for the Seventh Circuit, was overruled by this Court in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 400, 57 S. Ct. 556, and sustained Sub-section (s) of Section 75 as to all of its provisions. This Court, after presenting the question for decision, as to the constitutionality of Section 75, Subsection (s) as amended, said:

> "In this case, the Federal Court for Western Virginia (see *In re Sherman* [D. C.], 12 F. Supp. 297, and the Circuit Court of Appeals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. *Lafayette Life Insurance Co.* v. *Lowmon,* 79 F. (2d) 887 (Seventh Circuit); *United States National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. *Dallas Joint Stock Land Bank* v. *Davis* (C. C. A.), 83 F. (2d) 322. Because of this conflict and the importance of the question, we granted certiorari." 299 U. S. 537, 57 S. Ct. 312, 81 L. Ed. .....

These cases are not referred to in any other part of this Court's opinion.

Thus it can be said that these cases served only as

the basis for granting certiorari. The questions presented in the *Lowmon* case and in *U. S. National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493, also (85 F. (2d) 973), Circuit Court of Appeals for the Fourth Circuit were not the same, nor were the facts similar in those cases and the *Wright* case decided by this Court. In what manner the *Lowmon* case, 79 F. (2d) 887, and the instant case differ from *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556, 558, 81 L. Ed. ...., which case petitioner relies entirely upon, we shall discuss under the next heading.

III.

The petitioner contends that the decisions of the U. S. Circuit Court of Appeals for the Seventh Circuit in the instant case, 91 F. (2d) 894, and the so-called *Lowmon* case, 79 F. (2d) 887, are contrary to and in conflict with the decision of this Court in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556. No examination of the facts and issues of these cases are presented by petitioner. The respondent submits that there is no conflict.

The question in the *Lowmon* case was not before this Court in the *Wright* case. In the *Wright* case there had been no sale and the period of redemption had not begun. In the *Lowmon* and in the instant case, as to that tract on which the period of redemption had not yet expired, a sale had been had, and the period of redemption was running. The *Lowmon* case did not consider the question of the right of the Congress under its bankruptcy powers to defer or stay the foreclosure of a mortgage, or to defer a sale after a foreclosure. In the *Lowmon* case as in the instant case a sale had been had and certificates delivered

to the respective purchasers. The right of the Bankruptcy Court to administer upon the right of redemption was not questioned by the Court in the *Lowmon* case nor in the instant case. The Court did hold "that Congress had no power to bestow upon the Bankruptcy Court such right, to enlarge the debtor's estate, which had been limited by the foreclosure and sale in compliance with the laws of Indiana."

In the *Wright* case, decided by this Court, the primary question presented was the power of the Congress to formulate remedies for the protection of title to property against foreclosure or sale, while that title was yet in the debtor. In the *Pamp* case cited by petitioner, *United States National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493, there had been a sale, but it had not been confirmed, as was required under the laws of Nebraska. In the *Lowmon* and instant case, no confirmation by the Court of a sheriff's sale was required under Indiana laws. Furthermore in the *Lowmon* case and the instant case the Court was not considering the right of the Congress to enact legislation against foreclosure and sale, but with substantive property rights which arose when sales were had and certificates of sale executed and delivered in accordance with the Indiana Statutes. As was said by the Court in the instant case, "The notes and mortgage were not in existence; they were merged into the decree of foreclosure and were cancelled."

In *Board of Trade of City of Chicago* v. *Johnson,* 264 U. S. 1, 44 S. Ct. 232, 234, 68 L. Ed. 533, this Court said:

> "* * * Where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts."

In *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 243, 78 L. Ed. 413, 88 A. L. R. 1481, this Court stated:

> "Although the Courts would have no authority to alter a statutory period of redemption, the [Minnesota] legislation in question permits the courts to extend that period, within limits and upon equitable terms."

We do not believe that these principles were overruled or intended to be overruled by this Court in the *Wright* case.

The petitioner contends that this Court intended in the *Wright* case to uphold each and every provision of Subsection (s). In answer to this contention, we quote the U. S. Circuit Court of Appeals in the instant case when it says:

> "We think it upholds only those portions which were pertinent to the questions raised in that case, which did not include the right of the bankruptcy court to extend the time for redemption after that period had begun to run."

CONCLUSION.

We respectfully submit that there is no basis for the issuance of certiorari in the instant case. The *Lowmon* case and the case at bar are not in conflict with the decision of this Court in the *Wright* case, despite petitioner's earnest endeavor to confuse the issues.

Respondent urges that the decision of the U. S. Circuit Court of Appeals for the Seventh Circuit is manifestly correct and should not be disturbed.

The petition for certiorari should be denied.

Respectfully submitted,

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Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

Nos. 715 and 716

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,
Petitioner (Appellant),

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent (Appellee).

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF RESPONDENT (APPELLEE).

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Respondent (Appellee).

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF RESPONDENT (APPELLEE).

STATEMENT.

Appellant's "Statement of the Case" omits the factual matters essential to a proper consideration of this case and an intelligent conclusion with respect thereto. It is desired to point to these matters, avoiding, as far as possible, the few facts which have been set forth. We are forced to a more extended statement by reason of Appellant's basic omissions and erroneous assumptions.

(1) Prior to the filing on October 29, 1934 of Appellant's petition for relief under Section 75 of the

Bankruptcy Act, Appellee had filed its actions for the foreclosure of mortgages owned by it on the 280 acres in question. Both mortgages had run since 1925 and both were in default long before said petition was filed. One was for $3,000.00 secured by 80.31 acres in Section 4, and the other for $9,000.00 on the 200-acre tract in Section 31, in Jay County, Indiana. The two pieces constituted and were operated as one farm. (R. 2, 4 and 8.)

(2) At the time Appellant filed his original petition, he included in his schedules, filed in connection therewith, the 280.31 acres above referred to (R. 26), although at that time Appellant *did not own this land.* (R. 24.)

(3) It is important to note that Appellant filed his original petition under Section 75 on October 29, 1934; that subsequently, on December 19, 1934, he abandoned his quest for relief by way of composition or extension, and, representing that no agreement of creditors could be had, filed his amended petition under the original Frazier-Lemke Amendment (Subsection (s) of Section 75). (Sec. 75 of Bankr. Act, as Am. Mar. 3, 1933; 47 Stat. 1470.)

(4) On October 14, 1931, Appellant had executed, delivered and recorded a warranty deed to the 80.31-acre tract to Walter C. Wright, reciting a valid consideration and made subject to Appellee's said $3,000.00 mortgage. (R. 22, 26 and 27.)

Also, on October 14, 1931, he had conveyed to Emma G. Wright, his wife, John E. Coon and Edna E. Coon, respectively, 40 acres each of the other 200-acre tract. Each deed recited a valid consideration, was duly recorded and was made subject to a proportionate share of Appellee's mortgage. (R. 23, 28, 29, 30 and 31.)

(5) In the foreclosure proceeding covering the 80.31-acre tract, a final decree of foreclosure was entered in the Circuit Court of Jay County, Indiana, on June 9, 1934, the Appellant and his grantee, Walter C. Wright, the then owner, being parties defendant to said action and said decree.

(6) On July 12, 1934, said 80.31 acres were duly sold by the Sheriff of said County as ordered by said decree, and Appellee, being the purchaser thereof, received a duly executed certificate of sale for said property. (R. 63.)

(7) On April 13, 1935, Appellant received a deed back from his grantee, Walter C. Wright (R. 24), who then owned only his right of redemption from said sale.

(8) On August 2, 1935, the statutory period for the redemption from said sale having expired July 12, 1935, and, no redemption having been made, Appellee received a final deed conveying absolute title to said 80.31 acres. (R. 63.)

(9) On September 13, 1935, Appellee brought an action in ejectment for the possession of this property (R. 63), obtained a judgment as prayed and the same subsequently was affirmed by the Supreme Court of Indiana (R. 64) on appeal of *all* parties defendant therein. (Appendix II.)

(10) On October 11, 1935, Appellant amended his petition under amended sub-section (S) of Section 75, as amended August 28, 1935, (Title 11 U. S. C. A., Sec. 203); and contends that, as to this 80.31 acres, he is entitled to relief thereunder, despite the fact that Appellee then held absolute title to this tract and the right to the possession thereof.

(11) As to the property he had conveyed from the 200-acre tract in October, 1931, Appellant did not receive reconveyances until April of 1935. (R. 24.) Prior to that date (and prior to the filing of Appellant's petition under the original sub-section (S)), foreclosure had been started by Appellee and on May 27, 1935, a final decree of foreclosure and a personal judgment for $11,975.11 against Appellant were entered in said Jay Circuit Court. (R. 24.) Appellant and his surviving grantees of October, 1931 (as owners), were parties defendant to said foreclosure action and decrees. (R. 24-5.)

(12) On July 20, 1935, said 200 acres were duly sold by said Sheriff, as ordered by said decree, and Appellee, being the purchaser thereof, received a duly executed certificate of sale for said property. (R. 25.)

(13) On July 20, 1936, the statutory period for the redemption from said sale expired and, no redemption having been made, Appellee received a final deed conveying absolute title to said 200 acres. (R. 25.)

(14) The only order of the District Court covered by Appellant's first appeal #715 herein was the or-

der of December 14, 1936 whereby the District Court declined to review, but approved the recommendation of the Conciliation Commissioner that the above mentioned 280.31 acres be stricken from Appellant's schedules filed with his original petition on October 29, 1934. (R. 42) (being the only schedules filed by him.) Said appeal was prayed and allowed on December 23, 1936. (R. 44)

(15) On December 23, 1936, Appellant made written application for leave to amend his schedules A1 and B2 (as filed with his original petition in bankruptcy on October 29, 1934) so as to include the above described 280.31 acres which he did not own when said original petition was filed, but which had since been reconveyed to him. (R. 2.)

NOTE: This was the first effort made by Appellant to include this property in his schedules or to submit the same to the jurisdiction of the Federal Court for relief under the Bankruptcy Act, *at any time while he was the owner thereof.*

(16) The foregoing application for leave to amend said schedules made no mention of the previous order striking this property from said schedules, did not purport to have been made necessary by said order and made no attempt to preserve any questions or rights under or in connection with said order. (R. 2-3.)

(17) When, on December 31, 1936, the District Court denied leave to amend said schedules (R. 9) he prayed an appeal therefrom (#716 herein) and filed his Assignment of Errors therewith. Said appeal referred only to said order of December 31, 1936 and in said Assignment of Errors no point was made and no question raised as to the previous order of December 14, 1936.

(18) In amended schedule A-2 sought to be filed by Appellant on December 23, 1936, his aggregate indebtedness to Appellee, secured by said 280.31 acres is stated as $12,000.00 and interest. (R. 4.) In amended schedule B-2, his own estimate of the value of said property was $10,845.00.

QUESTIONS PRESENTED.

Appellant's statement of Questions Presented on pages 4 and 5 of his brief is inaccurate and misleading, each question being based upon a false premise of fact and law. The same errors of assumption are apparent throughout Appellant's brief.

As to Appellant's question (a):

Appellant was not the owner of the 200-acre tract when his petition in bankruptcy was filed and could not then submit same to the jurisdiction of the Federal Court. No effort was made to bring it within such jurisdiction until December 23, 1936, at which time Appellee held absolute title.

If, without a then amendment of said schedules, said 200 acres can be said to have been submitted to the Court by virtue of the enactment of amended sub-section (S) on August 28, 1935, or the amendment of Appellant's petition thereunder on October 11, 1935, it must be observed that on such dates a sale of said property, under final decree of the State Court, had been had on July 20, 1935 and the period of redemption had then begun to run.

The questions presented for review herein as to said 200-acre tract are, therefore:

First. Was this property *ever* within the jurisdiction of the District Court under amended sub-section (S)?

Second. If so, it must have been after the sale and after the period of redemption had begun to run. In this event, has Congress power to authorize the District Court to nullify the previous decrees and sales in the State Court, the rights of the purchaser (Appellee) acquired thereunder, to order a re-sale and to utterly destroy the period

of redemption, at the expiration whereof the purchaser would be entitled to absolute title?

Third. Was not the doctrine of *Lafayette Etc. Co.* v. *Lowmon,* 79 F. (2d) 887 properly applied by the Circuit Court of Appeals herein, rather than the decision of *Wright* v. *Vinton Branch, etc.,* 300 U. S. 440, wherein no final decree of a State Court and no sale pursuant thereto had been had, no rights of a mortgagee-purchaser had attached and no period of redemption had started to run?

As to Appellant's question (b):

Appellant was not the owner of the 80.31-acre tract at the time his petition in bankruptcy was filed nor, at that time, had the right of redemption been conveyed to him by his former grantee. Between the time the right of redemption was conveyed to Appellant on April 13, 1935, and the time Appellee acquired absolute title on August 2, 1935, no effort was made to submit the property or right of redemption to the jurisdiction of the Federal Court. The only questions presented as to this tract are, therefore:

First. By the terms of amended sub-section (S) did its enactment on August 28, 1935 or the amendment of Appellant's petition for relief thereunder on October 11, 1935, operate to bring within the jurisdiction of the District Court property (or any right to redeem same) to which Appellee had acquired absolute title on August 2, 1935?

Second. If such result was intended or effected by the terms of the Act, did Congress have the power to so legislate?

SUMMARY OF ARGUMENT.

I.

All vested property rights, titles to land and rules of alienation and transfer thereof involved herein, must be determined by the laws of the State of Indiana and the settled adjudications of its Courts. The Federal Courts are bound thereby. The law of the State governs in determining what property, or interest therein, was owned by Appellant, as the bankrupt, at the time his petition in bankruptcy was filed and consequently, what property or interest passed to the jurisdiction of the Federal Court by virtue of the petition in bankruptcy.

(a) To deny the effect of a decree of a State Court affecting real estate is to deny that the law of the State governs in such case.

(b) The test of whether property passes to the jurisdiction of the Bankruptcy Court, under Section 70 of the Bankruptcy Act, is whether it could have been transferred by the bankrupt or levied upon and sold under judicial process against him and must be determined by the local law.

(c) Property acquired by the bankrupt subsequently to the filing of his petition is not thereby submitted to the jurisdiction of the Bankruptcy Court.

(d) The mere inclusion in the bankrupt's schedules, of property not owned by him, cannot effect a submission of same to the Bankruptcy Court.

(e) Decisions of the Indiana Courts (including its Supreme Court, whose opinions are attached as Appendices II and III), have fixed the rights of these same parties

to the identical property involved herein and jurisdiction of said Courts has been accepted and urged by Appellant in the present proceedings.

(f) Title to property involved could not be conferred upon Appellant by waiver of Appellee. Title is a jurisdictional element. In any event, the previous actions and attitude of Appellee in the litigation concerning this property are wholly inconsistent with any thought of waiver.

II.

Under the law of Indiana and the settled adjudications of its Courts, and applying the test of the Bankruptcy Act, Appellant did not own the property involved herein at the time he filed his original petition in bankruptcy and could not submit same to the Federal Court for administration under the Bankruptcy Act.

(a) The conveyances whereby Appellant divested himself of title to the property in question prior to the filing of his original Petition in Bankruptcy were valid under the laws and decisions of Indiana.

(b) The decrees of foreclosure in the Circuit Court of Jay County, Indiana determined the rights of the parties herein to and in the real estate involved and ordered sales thereof pursuant to the law of Indiana. Thereby Appellee's rights under the notes and mortgages were merged into the decrees and by the sales became vested pursuant to the laws of Indiana.

(c) The sales of these tracts of land were had pursuant to final decrees of the State Court and as provided by the Statutes of Indiana, and Appellee received Certificates of Sales as purchaser thereunder.

(d) Under the Indiana law the period of redemption from each sale expired one year from the date of said sale,

and, there being no redemption, the deeds executed by the Sheriff of Jay County and delivered to Appellee vested it with absolute title to the land.

(e) Amended sub-section (s) cannot be applied without holding that nullification of the above established rights by the Bankruptcy Court was proper.

III.

The major premise of Appellant's brief and claim for relief herein is expressed in his Points 3(c), 3(e) and 3(f), dealing with the exclusive jurisdiction provision of Section 75. It is unsound because,

(a) The Bankruptcy Court could acquire no jurisdiction over land not owned by him;

(b) At the time amended (s) was enacted, Appellant had no proceeding pending except, possibly in general bankruptcy, wherein the exclusive jurisdiction element is not involved; and

(c) He did not attempt to submit this land to the jurisdiction of the Bankruptcy Court until *after* Appellee had absolute title to both tracts. His motion to amend his schedules at that time inferentially so admitted and also waived all questions involved in the appeal previously prayed by him.

IV.

Appellant has shifted from the position taken by him in the Courts below. There he claimed that the Bankruptcy Court acquired jurisdiction of the real estate by and *at the time of* the enactment of amended (s) and his amended petition thereunder. He now contends that this jurisdiction vested (retroactively) as of October, 1934, when his original petition was filed. This involves an application of

amended subsection (n) of Section 75, which was not in being prior to August 28, 1935.

There is no conflict between this Court's decision in *Wright* v. *Vinton Branch, etc., Supra,* and the decisions of the Court of Appeals (7th Cir.) in the instant case and in *Lafayette, etc.* v. *Lowmon,* 79 F. (2d) 887, where wholly different facts and rights were involved. In the instant case there are at least five substantial and controlling rights and questions which were not and could not be decided by this Court in the Vinton Branch case and the Court of Appeals (in the instant case) properly so held.

V.

Paragraph (2) of amended sub-section (s) cannot be given effect except in conjunction with Paragraph (3) and if the latter may not lawfully be applied herein, the former must likewise fail. The application of either or both to the instant case would result in violations of the United States Constitution and the Court of Appeals properly so held.

(a) Substantial vested property rights in specific property, viz., both tracts of land involved herein, of the purchaser at the previously had foreclosure sales would be taken from it without compensation and given to the bankrupt. Even the broad powers of bankruptcy would not warrant such violation of the Fifth Amendment.

(b) Application herein of amended sub-section (s) under the construction thereof by this Court, would require the nullification by the Bankruptcy Court of final decrees, (and sales duly had thereunder) of the Circuit Court of Jay County, Indiana, which have been upheld by the Supreme Court of that State.

Those decrees and sales involved property and property rights of which the State had exclusive jurisdiction and

any such action by the Bankruptcy Court would constitute a direct invasion of the State's rights under the Tenth Amendment and the "Full Faith and Credit" clause of the Constitution, (Art. 4, Sec. 1.)

(c) By the decrees and sales in the State Court, the relation of debtor and creditor between the former mortgagor and mortgagee was terminated and thereafter, as to this property and the former debt between the parties, the Congressional powers with reference to bankruptcy could have no application and the Bankruptcy Court no jurisdiction.

VI.

Appellant's criticisms of authorities cited in the opinion of the Circuit Court of Appeals in the instant case are without merit. Said citations demonstrate entire consistency as between that opinion and the decision of this Court in the Vinton Branch case.

ARGUMENT.

I.

It approaches a presumption to cite authorities to this Honorable Court in support of the fundamental proposition that all vested property rights, titles to land and rules of transfer thereof must be determined by the law and settled adjudications of the State wherein said rights or land arise or are situated. This Court has recognized this principle consistently in its learned decisions and has held that the Federal Courts are bound thereby, even in bankruptcy. It is true that in certain instances of general law and even where the Congressional policy demands a broader construction of a statute than has been accorded by the Courts of the State, the Federal Courts are not bound to the same literal degree as in other instances, but never, even under its broad powers in bankruptcy, has this Court announced anything in conflict with this fundamental principle.

White v. *Burnley,* 20 How. 235, 15 L. Ed. 886 (890).

Brine v. *Hartford Fire Ins. Co.,* 96 U. S. 627, 24 L. Ed. 858 (861).

Ridings v. *Johnson,* 128 U. S. 212, 32 L. Ed. 401 (405).

Clarke v. *Clarke,* 178 U. S. 186, 44 L. Ed. 1028.

Security Mortgage Co. v. *Powers,* 278 U. S. 149 (153-4), 73 L. Ed. 236 (240).

Bailey v. *Baker Ice Machine Co.,* 239 U. S. 268, 60 L. Ed. 275.

Olmsted v. *Olmsted,* 216 U. S. 386 (393-4), 54 L. Ed. 530 (533).

Board of Trade of City of Chicago v. *Johnson,* 264 U. S. 1, 68 L. Ed. 533.

The underlying basis for the above principle is the Fifth Amendment to the Constitution. As stated by this Court in *Louisville, etc. Bank* v. *Radford,* 295 U. S. 555, 79 L. Ed. 1593 (1604), "The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment."

(a) As a manifest correlary to the above general principle this Honorable Court has also said that when the adjudication of the highest Court of a State with respect to real estate situated therein is not followed by other courts, it is equivalent to a denial of the correctness of the elementary proposition above stated.

Clarke v. *Clarke,* 178 U. S. 186, 44 L. Ed. 1028.

(b) In Section 70 of the Bankruptcy Act (Title 11, U. S. C. A., Sec. 110) the property to which the trustee in bankruptcy acquires title is specified under sub-section (a). Subdivision (5) provides, as a test, "property which prior to the filing of the petition he (the bankrupt) could by any means have transferred or which might have been levied upon and sold under judicial process against him." It is now well settled that the law of the State must determine what property and what titles pass to the trustee under this "catch-all" provision of the Bankruptcy Act. That is to say, the title and property rights of the bankrupt, from whom the trustee acquires his title and rights, are fixed by the State law, and the Federal Courts are bound thereby.

It is the exclusive province of the State and its courts to determine what property the bankrupt could have transferred or which, under judicial process against him, might have been levied upon and sold.

Spindle v. *Shreve,* 111 U. S. 542, 28 L. Ed. 512 (514).

Thompson v. *Fairbanks,* 196 U. S. 516, 49 L. Ed. 577.

Zartman v. *First National Bank,* 216 U. S. 134, 54 L. Ed. 418.

Bailey v. *Baker Ice Machine Co.,* 239 U. S. 268, 60 L. Ed. 275.

In re: Landis (*Farmers Bank, Etc.* v. *Beckenbach*), 41 F. (2d) 700 (702) (C. C. A. 7th) Cert. den. 282 U. S. 872, 75 L. Ed. 770.

In re: Waite-Robbins Motor Co., 192 Fed. 47 (49).

In re: Berry, 247 Fed. 700 (705).

In re: Ford-Rennie Leather Co., 2 F. (2d) 750 (754).

Gilbert's Collier on Bankruptcy, 4th Ed., Page 1184.

(c) Appellant conveyed title to the land in question to third parties in October, 1931 by warranty deeds which were duly recorded. No reconveyance was made to him until April 13, 1935, which was long after he had filed his Petition in Bankruptcy.

Under the authorities above cited it will be noted that in bankruptcy the property of the bankrupt is submitted to the jurisdiction of the Court as of the time the Petition in Bankruptcy is filed. In numerous instances, efforts have been made by creditors of a bankrupt, or by the trustee in their behalf, to obtain the benefit of property acquired by the bankrupt subsequently to the date his Petition in Bankruptcy was filed. However, this Court and all other Federal Courts, have consistently held to the principle next above stated and have held that property acquired by the bankrupt subsequently to the filing of his petition is not thereby submitted to the jurisdiction of the Bankruptcy Court and that it belongs to the bankrupt free of all debts scheduled by him and from which he is discharged by virtue of said bankruptcy proceedings.

Thompson v. *Fairbanks,* 196 U. S. 516, 49 L. Ed. 577.

Zartman v. *First National Bank,* 216 U. S. 134, 54 L. Ed. 418.
Bailey v. *Baker Ice Machine Co.,* 239 U. S. 268, 60 L. Ed. 275.
Everett v. *Johnson,* 228 U. S. 474, 57 L. Ed. 927.
Matter of Swift, 259 Fed. 612.
Matter of Seal, 261 Fed. 112.

Applying the foregoing authorities it is obvious that when the right of redemption to the 80.31 acre tract and the title to the entire 200 acre tract (subject to the then pending foreclosure proceedings) were conveyed to Appellant on April 13, 1935, none of the property or property rights *then* acquired by him was thereby submitted to the jurisdiction of the Bankruptcy Court.

It seems self-evident that such property and property rights were not automatically submitted to that Court by the mere enactment of the new Frazier-Lemke Amendment or by the mere filing (without additional schedules or an amendment of the old) of Appellant's amended petition for relief under the new legislation. As a matter of fact, this was ultimately recognized by Appellant when, on *December 23, 1936,* he made formal application to the District Court for leave to amend his original and only schedules which had been filed with his petition in October, 1934. By this application he then sought to submit to the Bankruptcy Court the property here involved. His application at that time was denied and properly so, for at that time Appellee owned absolute title thereto. The denial of such application was the sole basis of the second appeal (No. 716 herein).

(d) The fact that a bankrupt includes in his schedule lands formerly owned and deeded by him to his children cannot affect the rights of his grantees and, in the absence of fraud, the deed cannot be questioned by the trustee in

bankruptcy who takes only such rights as the bankrupt had. Appellant's original schedules were therefore, ineffectual and void as to the property here involved.

Adams v. *Collier,* 122 U. S. 382, 30 L. Ed. 1207.

(e) In the instant case, as will be demonstrated under following Point II, the Supreme Court of Indiana, at the behest of Appellant and the parties to whom he had conveyed the real estate in question, has passed upon the question of what title to or right in this particular real estate was owned by Appellant at the time his original petition in Bankruptcy was filed. For the convenience of this Court, copies of the opinions of the Indiana Supreme Court are attached to this brief as Appendices II and III.

Wright, et al. v. *Union Central Life Ins. Co.* (Ind. Sup. Ct.), 7 N. E. (2d) 206.

Wright, et al. v. *Union Central Life Ins. Co.* (Ind. Sup. Ct.), 10 N. E. (2d) 726.

The same property, the identical parties and the same question of the rights of the latter as to the two tracts of land involved herein, were the subject of these decisions of the Indiana Court and said decisions were had and accepted as final by Appellant during the course of the instant litigation in the Federal Courts. On pages 35, 38 and 40 of the transcript of record herein appear verified pleadings and an assignment of errors filed herein by Appellant in which he refers to the State Court proceedings, including his appeals to the Indiana Supreme Court. Therein he urged upon the District Court that the matter of right of possession of the real estate and other questions affecting same were then under consideration of the Indiana Supreme Court which tribunal, he *then* insisted, had exclusive jurisdiction and control thereof.

The position thus taken by Appellant in the District Court assumes greater significance when considered in the

light of the wording of sub-section (o) (paragraph 2) of Section 75 (U. S. C. A. Tit. 11, Sec. 203) and Appellant's present contention (Point (1) (c) of his brief). Among the proceedings prohibited by paragraph (2) of sub-section (o) after the filing of a petition under Section 75, are proceedings for foreclosure and "for recovery of possession of land."

Both actions by Appellant in the Indiana court following foreclosure were solely for the possession of land. One was for a writ of assistance as to the 200-acre tract and the other was ejectment as to the 80.31-acre tract. Both were resolved against Appellant and he appealed both to the Indiana Supreme Court. As stated, the opinions of the latter are attached to this brief as Appendices I and II. Appellant not only did not question the then jurisdiction of the Indiana court, but, as above stated, definitely urged upon the District Court the exclusive control and jurisdiction of the State tribunal.

We respectfully urge that, combining the principles and the authorities under this point and those of point II, the conclusion is inescapable that when Appellant filed his original petition under Section 75 in October, 1934, he did not have title to either the 80.31-acre tract or the 200-acre tract, could not have transferred the same and that neither of them was subject to levy and sale under judicial process against him. Consequently, as of the date his petition was filed, no title to or property right in said land could have passed to the jurisdiction of the Bankruptcy Court.

(f) In his Reply Brief (page 4) on the application for certiorari herein, Appellant made the point that his lack of title at the time his Petition in Bankruptcy was filed was cured by the alleged fact that Appellee did not raise the question earlier in the proceeding. He makes incidental reference to the point on page 3 of his Brief herein.

While the several answers to this position seem obvious, we will state them briefly:

(1) Ownership of the land, as an essential to jurisdiction, could not be waived by Appellee.

(2) As against the record title owner, or for any purpose, Appellee was without right or authority to confer upon Appellant title to property which admittedly and of record belonged to someone else.

(3) Appellee has never by action or inference, admitted that ownership of these tracts was in Appellant from the time he conveyed them in 1931 to the time of the reconveyances in 1935. Its position has been to the contrary. In both foreclosure suits (instituted after the conveyances by Appellant) the grantees of the latter were made parties defendant as owners and the actions for possession were aimed directly at the grantees, the latter being Appellants in the appeals to the Indiana Supreme Court. We submit that this is entirely inconsistent with the supposed premise that Appellee had recognized Appellant as owner or had conceded such ownership by waiver.

II.

The pertinent land titles and property rights involved herein were determined and became vested by and pursuant to the laws of the State of Indiana. They were, chronologically arranged, as follows:

(a) At the time (October 29, 1934) Appellant filed his original petition for relief under Section 75 he had theretofore, on October 14, 1931, conveyed one tract to his son, and other tracts to his wife, daughter and son-in-law, respectively. (R. 22 *et seq.*) In his answer to Appellee's motion to strike the property from his schedules, he did not question the validity or efficacy of these conveyances. (R. 34-35.) In his motion for leave to amend his schedules by including this property, in December of 1936, he first raised the question.

These conveyances were made in accordance with the

laws of Indiana governing the transfer of land titles and their validity and effect were passed upon by the Supreme Court of Indiana in the first two cases cited below.

Wright, et al., v. *Union Central Life Ins. Co.* (Ind. Sup. Ct.), 7 N. E. (2d) 206.

Wright, et al., v. *Union Central Life Ins. Co.* (Ind. Sup. Ct.), 10 N. E. (2d) 726.

Kitts v. *Willson, et al.*, 140 Ind. 604 (612), 39 N. E. 313.

VanHorn v. *Lindsay* (Ind. App.), 8 N. E. (2d) 409 (411).

Even though the conveyances had been made with the intent to defraud creditors (which is not asserted or intimated in this case) they would be good as between the parties thereto, and are only *voidable* at the instance of an injured party. However, until and unless the injured party takes some step to void the conveyances, the same stand as valid.

Beavans v. *Grof* (Ind. Sup. Ct.), 5 N. E. (2d) 514.

Wild v. *Noblesville, etc.*, 153 Ind. 5, 53 N. E. 944.

VanHorn v. *Lindsay, supra.*

(b) The decrees of foreclosure, respectively, on June 9, 1934 and May 27, 1935, in the Circuit Court of Jay County, Indiana, which were had in accordance with the Statutes of Indiana, determined the rights of the parties to said real estate, and ordered sales thereof pursuant to the Indiana Statute. By this action of the Court the Appellee's rights under the notes and mortgages were merged into the decree and thereafter those rights could not be measured by the contract of the parties, but were fixed and vested by valid State Court decrees pursuant to the laws of Indiana.

Sec. 1174, Burns Annotated Indiana Statutes, 1926.

Wright, et al. v. *Union Central Life Ins. Co.* (Ind. Sup. Ct.), 7 N. E. (2d) 726.

Wright, et al. v. Union Central Life Ins. Co. (Ind. Sup. Ct.), 10 N. E. (2d) 206.

In accordance with the Rules of this Court, we have attached hereto, as Appendix I, a copy of the pertinent sections of the Indiana Statutes referred to in this brief.

(c) Pursuant to said final decrees, and as provided by the Statutes of Indiana, the 80.31-acre tract was sold by the Sheriff on July 12, 1934 and the 200-acre tract was sold by him on July 20, 1935. The usual Certificates of Sale were executed and delivered by the Sheriff to Appellee, as purchaser, and thereupon and thereby he acquired the absolute and unqualified right to full title, with all the incidents and right of enjoyment thereof, at the expiration of one year from the dates of said sales, respectively, its right thereto being *subject only* to the right of redemption as provided by Statute. No subsequent sale or order of Court was necessary to complete his title nor could his right thereto be defeated by any subsequent purchaser or creditor by the use of judicial process or otherwise.

Sec. 821, Burns Annotated Indiana Statutes, 1926.

(d) There was no redemption from said sales within the period fixed by Statute and at the expiration thereof, the Appellee, as purchaser, received deeds conveying absolute title as follows: August 2, 1935 to the 80.31-acre tract and July 20, 1936 to the 200-acre tract. When amended sub-section (s) first came into being and when Appellant filed his Amended Petition thereunder in October, 1935, Appellee was the owner of absolute title to the 80.31-acre tract as of date of sale and the holder of a Certificate of Sale to the 200-acre tract, entitling him to absolute title on July 20, 1936, (as of date of sale) *except only* in the event of redemption before that date.

Sec. 832, Burns Annotated Indiana Statutes, 1926.

Sec. 2-3909, Burns Annotated Indiana Statutes, 1926.

Recker v. *Tell City Bank*, 142 Ind. 99, 41 N. E. 323.

Duesterberg v. *Swartzel*, 115 Ind. 180 (185), 17 N. E. 155.

(e) To permit the Bankruptcy Court, or to construe amended sub-section (s) as intending or purporting to authorize that Court to (1) nullify the final decree entered, the sale had and the final deed delivered to Appellant covering the 80.31-acre tract, or (2) nullify the final decree entered, the sale had and the rights acquired by Appellant as purchaser of the 200-acre tract thereunder, would be a direct invasion of the powers reserved to the State by the Constitution, and a violation of Appellant's property rights theretofore determined by the Courts of the State of Indiana in accordance with the law of that State. We respectfully submit that the Circuit Court of Appeals had no alternative but to conclude that the new legislation, as applied to such property and property rights, was invalid.

We further respectfully urge that in a review of the Circuit Court's conclusion, this Honorable Court should hold either,

(1) That sub-section (n) of Section 75, as applied to property sold in the State Courts and with respect to which the period of redemption had begun to run, is invalid as obnoxious to the 5th and 10th Amendments, and as to such property and property rights cannot be utilized in conjunction with amended sub-section (s) for the purpose of extending relief under the latter; and

(2) That amended sub-section (s), as applied (particularly Paragraph (5)) to property or property rights fixed by local law, and which vested thereunder prior to the enactment of said amended sub-section (s), whether taken in

conjunction with said sub-section (n) or otherwise, is likewise void as opposed to said Amendments,

or

(3) That the evident intention of Congress to so apply this legislation cannot constitutionally be given effect and that therefore, following the doctrine quoted by this Court from *Crowell* v. *Benson,* 285 U. S. 22 (62), 76 L. Ed. 598 (619) this Court will avoid such application.

III.

Under his Points (3) (c) on page 11 of his brief, 3(e) on page 12 and (3) (f) on page 12 thereof, Appellant urges that by the filing of his original petition under Section 75, in October, 1934 and the order of reference thereof, the Bankruptcy Court acquired exclusive jurisdiction of the land involved herein, that Paragraph (5) of sub-section (s), as amended August 28, 1935, effected a continuation of said jurisdiction and that, in the interim the mortgagee could acquire no adverse rights in this land under the State laws and the decrees of its Courts.

The above is the major premise of Appellant's brief and his claim for relief under the Amended sub-section (s). It is unsound and cannot be sustained, for the following reasons, some of which have been necessarily discussed under the preceding Points of this brief:

(a) At the time his original petition under Section 75 was filed, Appellant owned neither the 80.31-acre tract nor the 200-acre tract and the Bankruptcy Court could not and did not acquire jurisdiction of either under that petition. Accordingly, Paragraph (n) of Section 75 could not and did not operate to invest the Bankruptcy Court with exclusive jurisdiction of this land, as of October, 1934. Further discussion is unnecessary here as the ground has already been covered.

(b) Appellant could only qualify for relief under the terms of original sub-section (s) by abandoning his application for relief under the preceding sub-sections of Section 75 as unavailable to him, and this he claims to have done. When the original (s) was declared unconstitutional, it was in effect as though never passed. (*Chicago, etc. Ry. Co.* v. *Hackett*, 228 U. S. 559, 33 Sup. Ct. 581, 57 L. Ed. 966; *Norton* v. *Shelby County*, 118 U. S. 425, 6 Sup. Ct. 1114, 30 L. Ed. 178.) If his proceeding was pending at all on August 28, 1935, it could only have been in general bankruptcy wherein the exclusive jurisdiction feature is not involved.

(c) As the Bankruptcy Court had no jurisdiction of this land by reason of Appellant's original petition under Section 75, and as the property or rights therein subsequently acquired by him were not submitted for relief herein until December, 1936, after Appellee had acquired absolute title to both tracts, the Indiana Courts, in the meanwhile had the undeniable right to deal with the property and to determine the rights of the parties with respect thereto.

In connection with the above (c) we respectfully call to this Honorable Court's attention, the following:

The first time, after the land involved herein had been reconveyed to him, that Appellant made any attempt to vest the Bankruptcy Court with jurisdiction thereof or to submit same for relief under Section 75 or either of its subsections, was on December 23, *1936*. On that date, he sought leave to amend his original (and only) schedules, which had been filed in October, 1934 (before he had reacquired title) so as to include this land.

By that step, Appellant

First: Necessarily acknowledged that the land had never before been within or subject to the jurisdiction of the Bankruptcy Court. Neither the amended schedules nor

his motion for leave to file same even pretended to assert that their presentation was a *re-submission* of this land, or that Appellant contended that they ever before had been within the Court's jurisdiction; and

Second: Waived all questions he had theretofore sought to save by appeal under the Court's order sustaining Appellee's petition to strike the land from the original schedules in which they had wrongfully been included. The questions thus waived are those presented in Appellant's first appeal, #715 herein.

IV.

NOTE: For a better understanding of the argument herein as opposed to Appellant's brief, we call attention to the following:

In the Court of Appeals, Appellant's position was that the enactment of sub-section (s), as amended August 28, 1935, operated to give the Bankruptcy Court jurisdiction of the land *as of the date of said enactment*, viz., August 28, 1935. In this he virtually conceded that the period for the redemption of the 80.31-acre tract had expired and a final deed therefor had been properly issued and that the sale of the 200-acre tract had properly been had and the period of redemption had begun before the amendment of August 28, 1935. His contention in the Court of Appeals, therefore, was that amended sub-section (s) could and did (1) extend the period of redemption of the 200-acre tract and (2) void the final deed to the 80.31-acre tract, issued prior to the new amendment. (See the opinion of the Circuit Court of Appeals. (R. 70.)) This also appears to have been his position in the District Court as nothing in his Assignment of Errors (R. 11, 12 and 13) indicates the contrary.

His brief in this Court, however, takes the position that, regardless of his non-ownership of the land when his

original petition was filed, the enactment of August 28, 1935, carried the alleged jurisdiction of the Bankruptcy Court back to October, 1934. The case was not decided by the Court of Appeals on any such basis and Appellant is not entitled to ask that the opinion of that Court be reviewed on such premise.

The reason for the shift is obvious. Thereby, Appellant endeavors to bring the 200-acre tract within the facts and purview of the Vinton Branch decision by establishing, if he can, that the Bankruptcy Court acquired jurisdiction before decree or sale. Also, he desires to avoid the difficulty of the final deed which had issued to the 80.31-acre tract before the enactment of amended sub-section (s).

* * * * * *

There is no conflict between the decision of this Court in *Wright* v. *Vinton Branch, etc.,* 300 U. S. 440, 81 L. Ed. 736, and the decisions of the Court of Appeals for the Seventh Circuit in the instant case and in *Lafayette Life Insurance Co.* v. *Lowmon,* 79 F. (2d) 887. This assertion is respectfully and sincerely advanced on the premise, supported by a detailed analysis of these cases, that the two Courts were, respectively, dealing with entirely different facts and rights.

Even though it could be held, which we cannot conceive, that the mere enactment of sub-section (s), as amended August 28, 1935, or the filing by Appellant of his amended petition for relief thereunder on October 11, 1935, operated to bring into the jurisdiction of the Bankruptcy Court, property or property rights acquired by him after the filing of his original petition, the only property or property right he then had was a right of redemption of the 200-acre tract. The period of redemption of the 80.31-acre tract had expired and Appellee had received an absolute deed thereto on August 2, 1935.

Upon this hypothesis, the question squarely arises as to the applicability of this Court's decision in the Vinton Branch case to the instant case. Also, in such situation does or does not Congress have the power to authorize a nullification of a State Court decree, the sale had thereunder, and either an extension (virtually a destruction) of the period of redemption for three years or an order of resale in lieu thereof?

It is our earnest contention that the Vinton Branch decision, involving wholly different facts and rights, cannot possibly be construed as adverse to the opinion of the Circuit Court of Appeals that any attempt by the Congress to assert such power would be a direct deprivation of Appellee's rights under the Constitution.

As to the 80.31-acre tract, we believe that no serious question can arise, either under the provisions of Section 75 or with regard to amended sub-section (s). At the time Appellant's original petition was filed, he was not and for about three years had not been the owner of this tract. Under foreclosure decree the tract was duly sold to Appellee on July 12, 1934, so that when, on April 13, 1935, the then owner conveyed to Appellant, he conveyed only what he owned, viz., the right of redemption. On August 2, 1935, the period of redemption having expired, Appellee acquired absolute title to this tract by final decree, wherefore, this property could not and never did come within the provisions of Section 75 or the purview of amended sub-section (s), which was not in existence at that time. If not within the Act, it was not, of course within the purview of this Court's decision with respect thereto. Hence, as to this property, there could be no conflict between the decision of the Circuit Court of Appeals in the instant case and that of this Honorable Court in the Vinton Branch case.

Let us have in mind also, that sub-section (n) of Section

75 was not involved in the Vinton Branch case whereas, in the case at bar, Appellant urges a combination of (n) and the amended (s) in an effort to establish jurisdiction in the Bankruptcy Court.

When sub-section (n) of Section 75 was amended on August 28, 1935, a part of the additions effected by said amendment read as follows:

> "In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

Accordingly, prior to the 1935 Amendment, Congress had not even attempted to apply the provisions of Section 75 to all the situations mentioned in the Amendment nor, affirmatively, to provide for an extension of the period of redemption.

> Sec. 75 of the Bankruptcy Act, as amended March 3, 1933.
> 47 Stat. 1470 (1473), (C. C. A., Title 11, Sec. 203).

Accordingly, as there had been a sale and the period for redemption therefrom had begun to run on the 80.31 acre tract at the time Appellant's original petition was filed in October, 1934, the amended sub-section (n) could not apply. Consequently, even under the new theory adopted in Appellant's brief this tract could not be affected by the present proceeding.

As to the 200-acre tract. This property not being owned by Appellant when his original petition was filed, was not then brought within the jurisdiction of the Bankruptcy Court. If such jurisdiction attached at the time and by

reason of the enactment of amended sub-section (s), or by reason of the mere filing of his amended petition for relief thereunder, as contended by Appellant in the District and Circuit Courts, it must be conceded that prior to both of said dates a valid sale had been duly had in the State Court and Appellant had only a right of redemption.

This was the state of the facts and property rights upon which the Court of Appeals passed in this case and the Lowmon case was quite similar. Its decisions in both are here attacked as being contrary to this Court's decision in the Vinton Branch case. In the latter (a) no decree of a State Court had been had nor were Court proceedings even pending; (b) there had been no sale of the property and no rights had attached on behalf of any purchaser at a sale; (c) the rights affected existed only by virtue of the mortgage-contract and had not been fixed or vested by a Court decree into which the mortgage had merged, as in the instant case; (d) no period of redemption had begun to run at the expiration of which, as in this case, the purchaser would have an absolute right to a deed, subject to defeat only by redemption; (e) the debtor-creditor relation still remained, a proper subject of bankruptcy jurisdiction; and (f) this Court could apply sub-section (s) so as to uphold the jurisdiction of the Bankruptcy Court without being obliged to hold that Congress and the Bankruptcy Court had the power and authority to nullify a previous valid decree of a State Court, had in accordance with the law, a valid sale thereunder, and substantial property rights acquired by a purchaser under said decree and sale.

In the instant case the exact reverse of each of these elements is true and we respectfully urge that by no possible inference to be drawn from this Court's opinion, could the latter be extended to cover such a divergent state of basic facts. The same is true as to the record in the Lowmon case

and we submit that the Court of Appeals, in its respectful adherence to the principles announced by this Court, could find no warrant for a belief that the Vinton Branch decision overruled the Lowmon opinion or could have any application to the record in the instant case. Be it remembered that the decision of this Court in the Vinton Branch case, *as applied to the record there presented,* is not in question in this appeal. Its soundness was not questioned in the Court of Appeals. Its application to a wholly different situation without violation of the Constitution, however, was deemed impossible.

V.

Despite this Court's definite conclusion in the Vinton Branch case that amended sub-section (s) does not afford an absolute stay, Appellant urges throughout his brief that Paragraph (2) expressly stayed all State Court proceedings (in effect extended the period of redemption) for three years. On his theory that jurisdiction attached in October, 1934, Appellant, of course, seeks to apply this stay with respect to the 80.31-acre tract. However, while he could not have applied it to this tract on his theory in the Courts below, nevertheless it would have applied to the 200-acre tract, *upon his lower court theory.* For this reason we answer his contention.

In the Vinton Branch opinion, this Honorable Court held that it had no occasion to decide whether an absolute stay of three years would have been justified under the bankruptcy power for the reason that the stay provided was *not* absolute. Apparently impressed with serious doubt as to the constitutionality of an absolute stay, if so construed, the Court followed the recognized doctrine of *Crowell* v. *Benson,* 285 U. S. 22, that in such situation the Court will seek a construction whereby the constitutional question may be avoided.

This doubt was evidenced and the power of Congress to grant a stay, conditional and discretionary with the Courts, was upheld in a case where no State Court decree, or even proceedings, had been had and no sale effected whereby definite and valuable rights had accrued and no period of redemption provided by a State law had come into being. In effect, the Court held that, *on its face*, the provision could not be said to be invalid and that, as against the principal ground asserted in support of the contention of unconstitutionality, this Court could not say that the Acts might not properly be applied to the case then on review. The conviction is inescapable that this Court found it possible to hold the stay or redemption extension valid only because of the power given the Court by the Act to control and terminate the stay by sale and the particular case admitted of such application of the Act.

However, such application of the Act is not possible in the instant case. Paragraph (2) cannot be divorced from paragraph (3) or any other of the concurrent paragraphs. This Court has said that the stay or extension of the redemption period is not absolute under (2) but is merely conditional and must be construed in conjunction with the power granted the Court under (3) to order a sale at any time within the three years. The Court of Appeals believed that an application of such construction was not constitutionally possible in a case where a sale had been had and property rights had vested thereunder by virtue of a final decree, pursuant to the laws of the State. Under the holding of this Court such conclusion appears absolutely sound. If the stay is valid, the Bankruptcy Court must have the right of re-sale and other powers of control under paragraphs (2) and (3). If and as applied to the instant case, the powers granted by paragraph (3) are invalid, the stay provided by paragraph (2) must also fall.

In the face of the previously accomplished sale and the acquisition of positive property rights thereunder it is inconceivable that Congress may give the Bankruptcy Court power to nullify them.

As stated by this Court in the Radford case, (p. 601), "The province of the Court is limited to deciding whether the Frazier-Lemke Act *as applied*", has violated the Constitution. The Court then said: "As we conclude that the Act *as applied* has done so, we must hold it void". (Italics ours.)

The violation there was specified as taking from the mortgagee without compensation and giving to the mortgagor, rights in specific property which were of substantial value.

In the Vinton Branch opinion it was said the creditor *conceded* that three of the five rights violated by the original Act (and so decreed in the Radford case) were protected in the new Act and only the two others were urged as objectionable under the new Act. One was the right to determine when the sale should be had and the other related to the right to control the property during default. The Court found, however, that on the face of the Act and as applied to the given facts, both could be said to have been preserved also.

In the instant case, no such application is possible. We have no quarrel with Appellant's citations of Indiana statutes and authorities as to the status of the right of redemption and the rights of the owner thereof. But *it was not the right of redemption which Appellant attempted to submit to the jurisdiction of the Bankruptcy Court.* He sought relief based on *his alleged ownership of the land*—a false premise, as decided by the Indiana Supreme Court in one of the cases hereinbefore mentioned,—*Wright, et al.* v. *Union Central Life Ins. Co.*, 7 N. E. (2d) 206. (Appendix II.)

(a) The Circuit Court of Appeals would not ignore the further proposition (which Appellant does not refute) that once a sale is had, the purchaser's relation to the property is not that of a mortgagee or a creditor secured thereby. Indeed, the purchaser may be an utter stranger to the mortgage and the debt. But whether he be the former mortgagee or an utter stranger, he has acquired certain definite rights of property by the *decree and sale* and to deprive him of same without compensation and for the benefit of the owner of the right of redemption brings the case directly under the Radford decision and others there cited as violative of the Fifth Amendment.

Among the rights of property referred to are the following:

(1) The absolute and unqualified right to full title, with all its incidents, at the expiration of one year, subject only to right of redemption within that period by the payment of the full amount of the sale price, plus interest at 8 per cent.

(2) The right to such full title and possession without interposition of a further judicial sale and without further delays, expense or the burdens of competitive bidding.

(3) The right to the property, if there be no redemption as it stands at the end of *one year* and not as it may be at the end of two or three years if a resale were then had under paragraph (3);

(4) The benefit of a fixed and definite recovery in the event of redemption instead of the prospect of an uncertain amount in the event of an appraisal and resale in the Bankruptcy Court.

Destruction of said rights is obnoxious to the Fifth Amendment in that it involves the taking of property rights from the purchaser without compensation and re-vesting the debtor with unrestricted title, unburdened of such rights. It serves not only to extend the period of redemption but to *wipe out the need of redemption.* It is not the

impairment of a lien alone, but the actual enlargement of debtor's estate at the expense of that of the purchaser which, in turn, is thereby diminished. If ever a deprivation of property without "due process" was involved, this is a flagrant instance.

As said in *Citizens Savings and Loan Association* v. *Topeka,* 20 Wall. 655 (662, 664), 22 L. Ed. 455 (461). "No court, for instance, would hesitate to declare void a Statute which enacted * * * that the homestead now owned by A should no longer be his, but should henceforth be the property of B."

The above case was cited by this Court in the Radford opinion, as was *Ochoa* v. *Hernandez y Morales,* 230 U. S. 139 (161), 57 L. Ed. 1427 (1437), wherein this Honorable Court stated, "Without the guaranty of 'due process' the right of private property cannot be said to exist".

Applying to the 80-31-acre tract, Appellant's theory that the jurisdiction of the Bankruptcy Court attached as of the date of the Enactment of Amended Sub-Section (s), the violations of the Constitutional Amendments (particularly the Fifth) are even more marked and such application conflicts with the express provisions of the Act itself.

As heretofore noted, at that time the period of redemption as to this tract had expired and the deed, conveying absolute title to Appellee, had issued. Even the terms of sub-section (n) would preclude jurisdiction in the Bankruptcy Court. If (which we cannot imagine) it were held otherwise, the immediate result would be the nullification of Appellee's deed, the actual taking from him of absolute title and re-vesting the same in Appellant. This would constitute an unqualified violation of the latter's rights under the Fifth Amendment.

On the other hand, if Appellant's far-fetched theory that the Bankruptcy Court acquired jurisdiction in October,

1934, of property which Appellant did not then own, it will be recalled that this 80.31-acre tract had theretofore been sold under State Court decree and was, in October, 1934, in the period of redemption. Under Appellant's new theory, therefore, the above argument as to property sold and in the period of redemption at the time bankruptcy is to have taken jurisdiction, would apply and need not be repeated here.

(b) An application of sub-section (s) to the instant case also involves violations of the Tenth Amendment and Article 4, Section 1 of the Constitution.

The right of the State to deal with titles to lands within its boundaries, and to make laws for the descent, alienation and descent of land, has never been surrendered to Congress, under its bankruptcy powers or otherwise. (*Louisville, etc. Bank* v. *Radford, supra.*) If the Act be applied to the situation presented in the instant case, an immediate invasion will result as to the reserved powers of the State to control this subject by legislation and to fix land titles and rights through the decrees of its courts and judicial sales thereunder. If paragraph (3) be applied, the power of the Bankruptcy Court to re-sell land thereunder would, of necessity, immediately involve the right of that Court to nullify the previous sale and the State Court decree by which it was ordered.

As a matter of fact, *both* of Appellant's theories are further objectionable as involving an invasion of the "Full Faith and Credit" clause of the Constitution. (Art. 4, Sec. 1.) Both require that the Bankruptcy Court nullify previous final decrees of the Indiana Court. This Court has flatly held that under the Constitution, Federal Courts are just as much bound to honor the judgments of a State Court as are Courts of any State foreign thereto.

Cooper v. *Newell,* 173 U. S. 555 (567), 43 L. Ed. 808.

None of the above objections under the Fifth or Tenth Amendments or the "Full Faith and Credit" clause was before this Court in the Vinton Branch case and none was there decided. Hence, we against respectfully urge that the Court of Appeals could not and did not apply that decision as controlling in the instant case.

(c) The Court's attention is respectfully directed to another fundamental question which would bar jurisdiction of the Bankruptcy Court over the property involved herein.

In the present case there were decrees of foreclosure which determined the amount due from the mortgagor to the mortgagee and ordered sales of the mortgaged property to satisfy the debt. The sales were had, the property was bid in and to the extent of the purchase price the mortgagor was released (*discharged*) from his debt. By the same token, the mortgagee lost his character *as such* and as a *creditor* and thereupon became the holder of the certificate of the sale which satisfied the debt. From that moment the relation of mortgagor and mortgagee and debtor and creditor vanished.

Bankruptcy powers necessarily and inherently deal with the debtor-creditor relation. Originally, it was said that the object of bankruptcy legislation was to effect an equal distribution of the bankrupt's property among his creditors. This definition has been broadened until, as stated by this Court in the Radford case, the matter of *the bankrupt's discharge* is to be regarded as "an object of no less concern than the distribution of his property".

See also, Remington on Bankruptcy (4th Ed.) Vol. 1, Chap. II, Sec. 20 and Chap. III, Sec. 47.

However, where a decree of foreclosure and a sale have already been had, not only is there no longer a debtor-

creditor relation subject to the jurisdiction of bankruptcy but *no debt remains* in connection with the mortgage foreclosed or the property involved therein (except in the event of a deficiency, which element is not involved here). The bankrupt has already been discharged from that debt by means of the foreclosure sale and the *property itself has been conveyed to pay the debt.* It is no longer available for distribution in bankruptcy. Hence, neither the element of distribution nor that of discharge remains subject to the exercise of the bankruptcy powers. Justification of this legislation, as applied to the instant case, cannot be found, even under the broad powers of bankruptcy.

From the terms of sub-section (n) as amended and from the Reports of the Congressional Committees we believe it must be conceded that it was the intention of Congress that this Act be applied to cases wherein sales had been had as well as those involving no prior sales. In various parts of his brief, Appellant complains that the Court of Appeals did not give effect to this intention and he appears to believe that this failure renders that Court's decision erroneous. No citation of authority is necessary to establish that where the intention of Congress is lawful and effect thereto may lawfully be given, it is the Courts' duty so to do. On the other hand, it is equally fundamental that if the intent of legislation or the giving effect thereto will render the same obnoxious to the Constitution, not only are the Courts not bound by such intention but must, if possible, find some other construction and application whereby this objection may be avoided. *Wright* v. *Vinton Branch, etc., supra.*

In conclusion of this point, we will not undertake in detail to refute Appellant's unfounded assertions that by the mere mention of the Lowmon case in the opening paragraph of its Vinton Branch opinion, this Court meant to

indicate that same was overruled by the latter and that if the Court had not intended such result it would have said so. We are content to adopt the Circuit Court's expression (R. 72): "We interpret this paragraph as being merely a basis for granting a certiorari." If, without analyzing the varying records involved in the various cases in the several Circuits, there appeared to be some conflict or confusion in the application of a Federal Statute, it was, of course eminently proper and highly desirable that this Court should grant certiorari. Likewise, it seems quite fair to assume that had this Court intended its application to be followed under any state of facts other than there presented, it would have so indicated. As a matter of fact, not one of the cases mentioned in said opening paragraph was again referred to in the opinion, nor did this Court give the slightest intimation that the opinion was intended to apply to the varying facts, respectively, of said several cases.

VI.

In its opinion in the case at bar, 91 F. (2d) 894 (R. 67-74) the Circuit Court of Appeals (7th Cir.) cited two decisions of this Honorable Court in support of its conclusion that in the Vinton Branch opinion this Court had evinced no inclination to depart from its previous holdings on the basic questions here involved. They were, *Home Building & Loan Assoc.* v. *Blaisdell,* 290 U. S. 398, 78 L. Ed. 413, and *Chicago Board of Trade* v. *Johnson,* 264 U. S. 1, 68 L. Ed. 533. The latter has been cited early in this brief. On pages 31 and 30, respectively, Appellant has criticized the citations of and quotations from these decisions in the Court of Appeals opinion.

It is obvious that the citation of the Blaisdell case was intended, primarily, to emphasize two legal truths. *First,*

that without *valid* legislative authority the Courts would have no power to alter a statutory period of redemption; and, *second*, that such authority was valid in that case because it was *State legislation* on a subject over which the State had reserved to itself the power of control. Thus, inferentially, a holding that the Congress had no power adverse thereto.

The Court of Appeals' quotation from the Johnson case is but a reiteration of the many expressions of this Court to the same effect. In the instant case there is no element of Congressional policy requiring a broader construction of the State statutes affecting land titles, conveyances thereof and Court decrees with reference thereto. Hence, the quotation as to the binding effect of State law in that field, may be literally applied herein, without restriction.

In his brief, Appellant seeks to establish that the decisions of the Indiana Supreme Court with respect to the property here involved (See our Appendices II and III) turned on a construction of sub-section (s). Nothing could be farther from the fact, at least insofar as those decisions affect the titles and rights of property. Those elements were decided by the Indiana Court on the basis of the law and settled adjudications of that State and in that respect the decisions are binding on all other Courts.

Appellant cites several District Court decisions wherein, he claims, the filing of petitions under (s) during the period of redemption was approved. As a matter of fact, not all of those citations support his premise and an equal number to the contrary are probably available. However, we are now looking to the highest authority in the land on this question, which it has not yet adjudicated, and possible conflicts between the District Courts are not particularly pertinent here.

Conclusion.

We respectfully submit that the Circuit Court of Appeals did not err in upholding the two orders of the District Court from which the appeals involved herein were taken. Those orders were:

1. Sustaining Appellee's motion to strike this real estate from the schedules filed in October, 1934, when he did not own same; and

2. Denying Appellant's motion, made in December, 1936, asking leave to then amend the schedules he had filed in 1934, so as to include said real estate therein.

It is our sincere contention that the Circuit Court of Appeals very properly held that amended Sub-Section (s) was invalid as applied to the case at bar.

We most respectfully submit that the judgment of the Circuit Court of Appeals for the Seventh Circuit, should be affirmed.

Respectfully submitted,

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APPENDIX I.

Burns Annotated Indiana Statutes, 1926.

Quotations of pertinent portions referred to in Brief.

821. CERTIFICATE OF PURCHASE—CONTENTS—DUPLICATE—RECORD—ASSIGNMENT—1. Whenever any real estate or interest therein shall be sold by the sheriff on execution or decretal order, he shall issue to the purchaser (or, if the real estate be sold in parcels to different purchasers, to each purchaser) a certificate of purchase. Such certificate shall show the court in which the judgment or decree was rendered, the parties thereto and date thereof, the dates of the execution and sale, the name of the owner and purchaser, and price paid; and shall contain a particular description of the premises and the estate therein sold, whether in fee, for life, or for years, and shall state the time when the purchaser will be entitled to a conveyance of the property. The sheriff making such sale shall prepare and sign a duplicate of such certificate of purchase, and forthwith deliver it to the clerk of the circuit court of the county in which such real estate is situate. Such clerk shall immediately record the certificate in the "Lis Pendens Record" kept in his office. The certificate shall be assignable by indorsement, and shall entitle the purchaser, his heirs, devisees or assigns, to a conveyance of the estate in said real property bought by such purchaser, at the expiration of one year from the date of his purchase unless the same shall have been previously redeemed as hereinafter provided. Any assignment of such certificate, duly acknowledged as in case of deeds, shall, together with the

acknowledgment, be recorded by the clerk in the "Lis Pendens Record" at the request of the assignee, and on the payment or tender of the fees allowed therefor.

832. MANNER OF REDEMPTION BY OWNER—"LIS PENDENS" ENTRY.—3. The real estate, or interest therein, sold as aforesaid, or any part thereof separately sold, may be redeemed at any time within one year from the date of such sale, by the owner thereof, or by his executor or administrator, under the direction of the court appointing him or the judge thereof in vacation, or by his heirs or devisees, or by any one holding either the legal or equitable title, by paying to the clerk of the court in whose office such certificate of purchase is required to be recorded, for the use of the purchaser, his executors, administrators or assigns, the amount of his purchase-money, and interest at the rate of eight per cent per annum thereon from the date of his purchase; or if the premises shall have been previously redeemed by any person having a lien thereon, as hereinafter provided, then by paying to such clerk, for the use of the last redemptioner, the amount paid by him for the redemption, with interest at the rate of eight per cent per annum thereon and his cost of redemption, * * *.

1174. PERSONAL JUDGMENT—ORDER OF SALE.—714. In rendering judgment of foreclosure, the court shall give personal judgment against any party to the suit liable upon any agreement or agreements for the payment of any sum or sums of money secured by the mortgage, and shall order the mortgaged premises, or so much thereof as may be necessary to satisfy the mortgage and judgment and costs of the action, to be first sold, before levy of execution upon other property of the defendant. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment.

1179. CERTIFIED COPY OF ORDER ISSUED TO SHERIFF—SALE. —717. The copy of the order of sale and judgment shall be issued and certified by the clerk, under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interest and costs, as upon execution; and if any part of the judgment, interest and costs remains unsatisfied, the sheriff shall forthwith proceed to levy the residue of the other property of the defendant.

APPENDIX II.

Vol. 7, North Eastern Reporter, 2d Series (Ind.), p. 206:

WRIGHT *et al.* v. UNION CENTRAL LIFE INS. CO.

No. 26782.

SUPREME COURT OF INDIANA.

April 2, 1937.

1. Mortgages 594(3)

After issuance of certificate of sale to mortgagee who purchased mortgaged farm at foreclosure sale, grantee to whom farm was deeded prior to foreclosure had only right to redeem, and hence sole right conveyed by deed to mortgagor after issuance of certificate was right to redeem expiring one year from date of sale.

2. Mortgages 543

Right of mortgagee which purchased mortgaged farm at mortgage foreclosure sale to possession of farm after expiration of redemption period, as against mortgagor who, prior to foreclosure, deeded property subject to mortgage to son who was joined in foreclosure proceeding and who reconveyed right to redeem to mortgagor after expiration of redemption period and after petition in bankruptcy had been filed by mortgagor, held not affected by moratorium provisions of amendment to Bankruptcy Act (Bankr. Act, Sec. 75(s) as amended Aug. 28, 1935, 11 U. S. C. A. Sec. 203(s).

Appeal from Jay Circuit Court; HANSON F. MILLS, *Judge.*

Action by Union Central Life Insurance Company against Walter C. Wright and others. Judgment for plaintiff, and defendants appealed to the Appellate Court, by which the cause was transferred to the Supreme Court under Burns' Ann. St. 1933, Sec. 4-217.

Affirmed.

Samuel E. Cook and Homer E. Bailey, both of Huntington, and Wheeler Ashcraft, of Portland, for appellant.

Roscoe D. Wheat, of Portland, for appellee.

FANSLER, *Judge.*

Prior to 1931, appellant James M. Wright mortgaged the farm, the possession of which is here in question, to appellee. Thereafter in 1931, his wife joining him, he conveyed the property to his son, Walter C. Wright, subject to the mortgage. On June 9, 1934, appellee obtained a judgment foreclosing its mortgage in an action in which James M. Wright and Walter C. Wright were both parties defendant. On July 12, 1934, the property was sold by the sheriff in satisfaction of the judgment. It was purchased by appellee, who received a sheriff's certificate of sale. On October 30, 1934, James M. Wright, filed a petition in bankruptcy, under section 75, subsection (s) of the Bankruptcy Act (Frazier-Lemke Act, 48 Stat. 1289). In his petition in bankruptcy he scheduled the real estate in question, which he did not own. On April 13, 1935, Walter C. Wright and others deeded the real estate to James M. Wright. On May 27, 1935, in *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 55 S. Ct. 854, 79 L. Ed. 1593, 97 A. L. R. 1106, the Frazier-Lemke Act was declared unconstitutional. On August 2, 1935, appellee surrendered its certificate of sale and received a deed to the land. On August 28, 1935, Congress enacted a new Bankruptcy Act

(Frazier-Lemke Farm Mortgage Act), 11 U. S. C. A. Sec. 203(s). See *Lafayette Life Ins. Co.* v. *Lowmon* (C. C. A.), 79 F. (2d) 887. On September 13, 1935, appellee brought this action against appellant Walter C. Wright and Virgie M. Wright, his wife, alleging that appellee is the owner of the real estate in question, and entitled to possession thereof; that defendants are holding possession without right, and have unlawfully kept the plaintiff out of possession; and asking damages in the sum of $100. Appellant James M. Wright petitioned to be, and was, admitted as a party defendant. Defendants answered, setting up the petition of James M. Wright in bankruptcy; that he had been declared a bankrupt; that the court had no jurisdiction; and that Walter C. Wright and Virgie M. Wright held possession of the real estate as tenants of James M. Wright. Afterwards Virgie M. Wright filed an answer disclaiming any interest in the real estate. There was a trial, and judgment for the plaintiff for possession and $50 damages.

(1) It will be noted that, at the time of the judgment and sale of the property to appellee, James M. Wright was not the owner of the property; that it was deeded to him by Walter C. Wright after the certificate of sale was issued, and after the filing of his petition in bankruptcy. At that time, the only right, title, or interest that Walter C. Wright had in the property was the right to redeem prior to July 12, 1934. Walter C. Wright, who claimed by his answer to hold possession of the property as tenant of James M. Wright, was a party to the foreclosure proceeding, and knew that all of his right, and all of the right which he conveyed to James M. Wright, in the real estate, was a right to redeem. This right expired by statute one year from the date of the sale.

(2) Appellants do not point to any provision in the

amendment of the Bankruptcy Law which would bring within its terms a right of redemption acquired from another after the filing of the petition in bankruptcy, or which would bring within its terms any property which was not owned by the bankrupt at the time his petition was filed, and no such provision is apparent. The cases in which the constitutionality of the act was considered involve property of a bankrupt mortgagor in which he had some right, title, or interest at the time his petition was filed. The moratorium provision of the Bankruptcy Act does not apply.

Judgment affirmed.

APPENDIX III.

Vol. 10, North Eastern Reporter, 2d Series (Ind.), p. 726:

WRIGHT *et al.* v. UNION CENTRAL LIFE INS. CO.

No. 26799.

SUPREME COURT OF INDIANA.

October 26, 1937.

1. Mortgages 544(3)

In mortgage foreclosure suit, wherein plaintiff filed petition for writ of assistance to obtain possession of mortgaged land after purchasing it at foreclosure sale, defendants were not entitled to change of venue from county; since writ of assistance is a summary proceeding ancillary to foreclosure action, and precludes trial of question as to right of possession.

2. Mortgages 544(3)

A writ of assistance to put purchaser at mortgage foreclosure sale in possession of mortgaged land being a summary proceeding, service of notice thereof on defendants in foreclosure action was sufficient and formal summons unnecessary.

3. Mortgages 544(3)

An equity court has power to hear summarily in vacation a petition for writ of assistance to put purchaser at mortgage foreclosure sale in possession of mortgaged land.

4. Mortgages 544(3)

No question is presented by filing motion for new trial after granting of writ of assistance to put purchaser at

mortgage foreclosure sale in possession of mortgaged land.
5. Mortgages 544(3)

A petition for writ of assistance to put purchaser at mortgage foreclosure sale in possession of mortgaged land was properly filed in circuit court which rendered foreclosure decree after change of venue from county wherein mortgaged land was located.

6. Mortgages 544(3)

In mortgage foreclosure action, defendants were not entitled to interpose, as defense to petition for writ of assistance, filed by purchaser at foreclosure sale, matters which subsequently arose affecting possession of mortgaged land; defendant's right of possession being forfeited when they failed to redeem property.

Appeal from Adams Circuit Court; HUBER M. DE VOSS, *Judge.*

Action by the Union Central Life Insurance Company against James M. Wright and others. Judgment for plaintiff, and from a judgment granting plaintiff a writ of assistance, defendants appeal.

Affirmed.

Samuel E. Cook and Homer E. Bailey, both of Huntington, and Wheeler Ashcraft, of Portland, for appellants.

Roscoe D. Wheat, of Portland, for appellee.

TREMAIN, *Judge.*

On the 1st day of October, 1925, the appellant James M. Wright was the owner of 200 acres of land in Jay county, Ind., and executed a mortgage to the appellee to secure a debt of $9,000. After the execution of the mortgage and before a foreclosure suit was filed, he conveyed the land

to his wife, son, daughter, and son-in-law in parcels. The appellee filed its action in the Jay circuit court to foreclose said mortgage and made all the named parties defendants. The death of the wife was suggested to the court, and the cause was dismissed as to her.

Pending the foreclosure suit, and on the 30th day of October, 1934, James M. Wright filed his petition in bankruptcy and claimed the benefits of the Frazier-Lemke Act (Bankr. Act, Sec. 75(s), as added by Act Cong. June 28, 1934, 48 Stat. 1289, 11 U. S. C. A., Sec. 203(s) note). On May 27, 1935, personal judgment was rendered against the said James M. Wright for the sum of $11,975.11, and for foreclosure of the mortgage as against all of the defendants. This judgment was rendered in the Adams circuit court, a change of venue having been taken by the defendant James M. Wright from the Jay circuit court. An order of sale was issued to the sheriff of Jay county, and on July 20, 1935, the real estate was sold to the appellee for the amount of its judgment and costs. A certificate of sale was issued to it, and on July 20, 1936, the property not having been redeemed, a sheriff's deed was duly executed to the appellee.

The appellants continued to hold possession of said real estate, and upon demand refused to surrender possession. The appellee filed a petition in vacation for a writ of assistance in the original action to foreclose the mortgage, in the Adams circuit court, and caused notice to be served upon appellants. The appellants appeared and filed answers in which they objected to the jurisdiction of the court, and also claimed that they were entitled to hold possession of the real estate for a period of three years, pursuant to the Fraizer-Lemke Act (Bankr. Act, Sec. 75(s), as amended by Act Cong. Aug. 28, 1935, Sec. 6, 11 U. S. C. A., Sec. 203(s). James M. Wright filed a motion and affidavit for

a change of venue from the county, which the court overruled. A hearing was had, in vacation, and the court granted the writ of assistance, and ordered immediate delivery of the possession of the land to the appellee. The appellants filed motion for a new trial, which was overruled, and this appeal was perfected.

The claim of the appellants to the benefits of the moratorium provision of the Frazier-Lemke Bankruptcy Act was decided in this court adverse to their contention in the case of *Wright et al.* v. *Union Central Life Ins.* Co. (Ind. Sup.) 7 N. E. (2d) 206. The question there before the court and the facts are the same as in the case at bar.

(1-3) The appellants admit in their brief that a writ of assistance is a summary proceeding and cite authorities holding that it is ancillary to the main action, but they claim that it is a civil suit, and under the statute are entitled to a change of venue from the county. This court has held that a change of venue does not lie from an application for a receiver which is ancillary to a pending action. This is because the application for the appointment of a receiver does not ask for a judgment determining the rights of the parties, but asks only for an interlocutory order designed to preserve the status of the parties in reference to the property involved. *Stair* v. *Meissel* (1934) 207 Ind. 280, 192 N. E. 453; *Kist* v. *Coughlin* (1936) (Ind. Sup.) 1 N. E. (2d) 602, 4 N. E. (2d) 533; *Vogel* v. *Chapell* (1937) (Ind. Sup.) 6 N. E. (2d) 953.

The appellants were not entitled to a change of venue from the county, since a writ of assistance is a summary proceedings ancillary to the foreclosure action, and does not admit of a trial of any bona fide question as to the right of possession. It is an instrument of the court whereby the purchaser is given full benefit of his purchase by putting

him in possession. Being a summary proceeding, the notice given was sufficient. Formal summons was unnecessary. A court of equity possessed the power to summarily hear the matter in vacation. *Gilliland et al.* v. *Milligan et al.* (1896) 144 Ind. 154, 42 N. E. 1010; *Emerick* v. *Miller* (1902) 159 Ind. 317, 64 N. E. 28; *Rooker* v. *Fidelity Trust Company* (1924) 196 Ind. 373, 145 N. E. 493, 494.

In discussing this question in the Rooker Case, the court used the following language:

> "Upon such an application no question determined by the original decree can be litigated. The only question on the application for a writ of assistance is whether the decree has or has not been complied with, and the defendant in such a case cannot, in defense thereto, renew the contest as to title or right of possession which has already been settled. *Emerick* v. *Miller* (1902) 159 Ind. 317, 64 N. E. 28.
>
> "A writ of assistance is a summary proceeding by which a court of equity will enforce its decree determining the title or right of possession of real estate, without compelling the party entitled thereto to resort to a court of law to recover the same. It being a summary interlocutory proceeding to be determined by the court of equity, which rendered the original decree, the parties are not entitled to a jury trial, nor to a special finding of facts, as was requested by appellants in this case."

(4) Also it may be added that no question is presented by filing a motion for a new trial.

(5) The appellants made objection because the writ of assistance was filed in the original action foreclosing the mortgage in the Adams circuit court, and assert that an action for the recovery of the possession of real estate must be brought in the county were the real estate is located. They are mistaken in this contention, evidently overlooking the fact that the writ is a summary interlocu-

tory proceeding and must be determined by the court of equity which rendered the original decree.

(6) The appellants were not entitled to interpose, as a defense to the writ of assistance, matters which subsequently arose affecting possession of the land. The judgment of foreclosure determined the rights of the parties, and, when the appellants failed to redeem the property, their right of possession was forfeited.

Finding no reversible error in the record, the judgment of the lower court is affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

Nos. 715 and 716

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,
Petitioner (Appellant).

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent (Appellee).

SUPPLEMENT TO BRIEF OF RESPONDENT (APPELLEE).

ARTHUR S. LYTTON,
Chicago, Illinois,
ROSCOE D. WHEAT,
Portland, Indiana,
STANLEY K. HENSHAW,
Cincinnati, Ohio,
VIRGIL D. PARISH,
Cincinnati, Ohio,
ARTHUR P. FEIGEN,
Chicago, Illinois,
Counsel for Respondent (Appellee).

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NOS. 715 AND 716.

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,
Petitioner (Appellant),

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent (Appellee).

SUPPLEMENT TO BRIEF OF RESPONDENT (APPELLEE).

For the convenience of this Honorable Court we submit the following analysis of the decisions of the several Circuit Courts of Appeal mentioned in the opening paragraph of the opinion in *Wright* v. *Vinton Branch of Mountain Trust Bank,* 300 U. S. 440, 81 L. Ed. 736. Also, a statement of decisions of such other Circuits as we have been able to find involving the application of Section 75 of the Bankruptcy Act, as amended.

The decisions listed in the opening paragraph of said Vinton Branch opinion are, *In re Sherman,* 12 Fed. Supp. 297 (Dist. Court) *Wright* v. *Vinton Branch, etc.,* 85 Fed.

(2d) 973 (C. C. A. 4th); *Lafayette Life Ins. Co.* v. *Lowmon*, 79 Fed. (2d) 887 (C. C. A. 7th); *U. S. National Bank of Omaha* v. *Pamp*, 83 Fed. (2d) 493 (C. C. A. 8th); *Dallas Joint Stock Land Bank* v. *Davis*, 83 Fed. (2d) 322 (C. C. A. 5th). Of these, the first two mentioned were the decisions of the lower courts in the same case (*Wright* v. *Vinton Branch, etc.*). The Lowman and Pamp decisions held amended Subsection (s) of Section 75 invalid as applied to the facts and property involved in those cases, respectively, and the Davis case upheld the legislation in its application to the facts of that particular case, which were similar to those in the Vinton Branch case and very different from those in the Lowmon and Pamp cases.

In the Lowmon and Pamp cases decrees of foreclosure and sales by the Sheriff had been had prior to the filing of the Petition in Bankruptcy and the Circuit Courts of Appeal for the 7th and 8th Circuits both held that Subsection (s), as amended August 28, 1935, was invalid as to property rights acquired through decrees and sales in the State Court, although final deeds had not passed to the purchasers prior to the filing of the Petition for Relief under the Bankruptcy Act.

In both Circuits, it was held that the rights of the parties having been fixed by the State Courts in accordance with the State law, Congress had no power to confer jurisdiction upon the Bankruptcy Court to nullify such rights. The Lowmon case arose in Indiana, as does the case at bar, and in each the Court of Appeals for the 7th Circuit referred to the decisions of the Indiana Supreme Court as having fixed the rights acquired by the purchaser at the foreclosure sale.

It is to be noted that in *Dallas, etc. Bank* v. *Davis*, from the 5th Circuit, there had been no decree or sale in the State Court and the property rights involved were almost identical to those considered by this Honorable Court

in *Wright* v. *Vinton Branch, etc.* Consequently, this opinion in the 5th Circuit cannot be regarded as in conflict with the decisions of the 7th Circuit in the Lowmon and instant cases or the Pamp decision in the 8th Circuit.

The decision in the Davis case (5th Circuit) should be considered in the light of the decision of the same Court handed down only five or six months prior thereto. We refer to *Glenn* v. *Hollums,* 80 F. (2d) 555. The latter did not specifically refer to Subsection (s) but involved a construction of Subsections (n) and (o) of Section 75, which are, of course, necessarily involved in all these cases. In that case (involving two appeals of similar facts) there *had been* decrees of foreclosure and sales by the Sheriff in accordance with the laws of Texas prior to the time the petition under Section 75 was filed. The Circuit Court held that Section 75 of the Bankruptcy Act could have no application to such cases, the property rights of the purchaser having been fixed pursuant to the laws of the State. The recognized principle was stated succinctly by the Court:

> "Section 75 of the Bankruptcy Act (11 U. S. C. A. Sec. 203) does not purport to alter or enlarge property rights created by the laws of the states. Courts of bankruptcy must administer the debtor's property as they find it. They cannot undo what has already been lawfully done by a court of competent jurisdiction."

It is significant that in its subsequent decision in *Dallas, etc. Bank* v. *Davis,* where the validity of the new Subsection (s) was upheld as applied to the facts there presented, the Circuit Court of Appeals for the 5th Circuit did not overrule, expressly or inferentially, its previous decision in *Glenn* v. *Hollums* and did not even mention the latter. This was an obvious recognition that the facts and property rights involved before and after foreclosure sales, respectively, presented entirely different questions.

The other decisions of the Fourth, Fifth and Eighth Circuits mentioned in footnote (1) of the opinion in *Wright* v. *Vinton Branch,* are, as stated therein, mere applications

of the above-mentioned decisions in the same Circuits and are not analyzed here.

Thus, it will be seen that upon analysis there is no conflict between the 7th and 8th Circuit on the one hand and the 5th Circuit on the other. As a matter of fact, a diligent search fails to disclose any decision of either of the several Circuit Courts of Appeal throughout the country holding that Section 75, as amended August 28, 1935, can or should be applied to cases where, previous to the filing of the petition in bankruptcy, there has been a valid decree of foreclosure in the State Court and a sale had pursuant thereto. On the other hand, the Circuit Court of Appeals for the 3rd Circuit has held the Act inapplicable under these circumstances (see *Shreiner* v. *Farmers' Trust Co.*, 91 F. (2d) 606 (C. C. A. 3rd) and in the 10th Circuit (*Wilcons* v. *Penn Mutual Life Insurance Co.*, 91 F. (2d) 417) the Circuit Court of Appeals upheld the legislation but remanded the particular case for the sole purpose of permitting petitions to be filed to determine what property or property rights the purchaser at the foreclosure sale had acquired under the laws of the State of Kansas. This is another recognition of the binding effect of a State Court adjudication of property rights.

The Wilcons opinion and the status in which the case was left thereby, should be considered in conjunction with the opinion of the District Court for the District of Kansas rendered February 26, 1938, *In re Nossman*, ... Fed. Supp. ..... Considering the question under the Kansas law (which its Circuit Court of Appeals had left open in the Wilcons case), the District Court held that where a mortgage has been foreclosed and the sale thereunder has been confirmed (as required by the Kansas Statute), the matter is *res adjudicata* as to property rights acquired and the Frazier-Lemke Act does not apply. The Court stated that while Subdivision (n) of Section 75 specifically provides for such cases, it does not follow that Congress intended to, or had

the power to alter well-established property laws of the State of Kansas. It likewise refers to the fact that after the foreclosure sale, the debtor and creditor relation, as between the former mortgagor and mortgagee, ceases.

Possession by State Court.

In a number of the decisions concerning the questions involved herein, the well-known rule has been recognized that where a State Court of competent jurisdiction, through a proceeding pending before it, has taken jurisdiction and possession of property thereafter sought to be submitted to the jurisdiction of the Bankruptcy Court, the latter has no jurisdiction in the premises and may not interfere with the administration of the State Court as to such property. To eliminate any possible confusion in the application of this rule herein, the following brief statement may be of value.

When, by its decree, the State Court orders the property sold and it is sold thereunder, that Court takes the property into its custody and, under a petition subsequently filed, the Bankruptcy Court may not interfere.

Straton v. *New,* 283 U. S. 318 (324), 75 L. Ed. 1060 (1096).

Central National Bank v. *Hazard,* 49 Fed. 293 (C.C.).

Analogous thereto are the holdings that when an execution is levied and the levy endorsed on the writ (as required by Statute) "seizure" is complete and the property is in the custody of the State Court which rendered judgment.

Glenn v. *Hollums,* 80 F. (2d) 555 (C. C. A. 5th).

Wilkinson v. *Goree,* 18 F. (2d) 455 (C. C. A. 5th), (Cert. den. 274 U. S. 761, 47 S. Ct. 770, 71 L. Ed. 1339).

Applicability.

The foregoing analysis is of particular importance considered in the light of the principles long since announced and rigidly followed by this Honorable Court. In referring to its limitations, this Court stated in *Liverpool, etc., Steamship Co.* v. *Commissioners of Emigration*, 113 U. S. 33 (39), 28 L. Ed., 899 (901):

> "It has no jurisdiction to pronounce any statute, either of the State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. In the exercise of that jurisdiction, it is bound by two rules, to which it has rigidly adhered: one, *never to anticipate a question of constitutional law in advance of the necessity of deciding it;* the other, *never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.* These rules are safe guides to sound judgment. It is the dictate of wisdom to follow them closely and carefully." (Italics ours.)

Consistent with the foregoing established principle, it is not believed that by its opinion in *Wright* v. *Vinton Branch, etc.*, this Honorable Court intended to indicate that the conclusions therein expressed, or the legislation in question could or should be applied to facts and property rights very different from those *then* before it. The Court met the particular challenge presented in the Vinton Branch case by holding that the Act was not void on its face and that it was not impossible of valid application. Very expressly, and consistent with the policy above quoted, the Court refrained from deciding questions which might arise later but which were not then pertinent.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

Nos. 715, 716.—October Term, 1937.

715	James M. Wright, Petitioner, *vs.* Union Central Life Insurance Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
716	James M. Wright, Petitioner, *vs.* Union Central Life Insurance Company.	

[May 31, 1938.]

Mr. Justice Reed delivered the opinion of the Court.

Petition for writs of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit was granted by this Court to review the judgments in two appeals brought to the lower court by petitioner here. *Wright* v. *Union Central L. Ins. Co.*, 91 F. (2d) 894. The judgments affirmed two orders of the District Court of the United States for the Northern District of Indiana, entered there in proceedings under Section 75 of the Bankruptcy Act instituted by Wright.

The earlier order approved the recommendation of the Conciliation Commissioner to strike certain described real estate from the debtor's schedules and the later order refused to permit the debtor to amend the schedules by showing the circumstances under which the debtor claimed an interest in the same real estate covered by the earlier motion. The correctness of the orders depends largely upon the constitutional validity of certain provisions of Section 75(n) of the Bankruptcy Act, as amended by Section 4 of the Act of August 28, 1935. 49 Stat. 942. These provisions, held unconstitutional by the lower court, operate to extend the period of redemption from a foreclosure sale allowed the mortgagor under state law. To decide this important constitutional question, our writs of certiorari were issued. In view of Section 1 of the Act of

August 24, 1937, c. 754, 28 U. S. C. sec. 401,[1] enacted subsequent to the decision of the case below, the Court certified to the Attorney General the fact that the constitutionality of an Act of Congress affecting the public interest was drawn in question in this cause. The Attorney General disclaimed intention to intervene.

The controversy as to whether or not the land in question was subject to the administration of the court of bankruptcy had its origin in this plexus of facts. Petitioner James M. Wright on October 1, 1925, together with his wife, executed a mortgage to respondent company on a tract of land in Indiana, containing 80.31 acres, to secure a note of $3,000. At the same time, the same parties executed another mortgage to the respondent on a different tract of land containing 200 acres, also in Indiana, to secure a note of $9,000. In 1931, the first tract was deeded to petitioner's son, and three separate forty-acre parcels from the second tract were deeded to his wife, daughter and son-in-law respectively. The property was conveyed subject to definite portions of the indebtedness but without an assumption of any of the obligation by the grantees.

On January 3, 1934, respondent brought suit to foreclose the smaller mortgage, joining as defendants petitioner and his son. Judgment of foreclosure was entered, June 9, 1934, and on July 12, 1934, the 80.31-acre tract was sold, on the foreclosure sale, to respondent. Respondent received a duly executed sheriff's certificate of sale. Delivery of final deed was delayed in view of the one-year period of redemption allowed to mortgagors by Indiana statute. Ind. Ann. Stat. (Burns, 1933) §§ 2-3909, 2-4001.

Wright filed a petition under Section 75 of the Bankruptcy Act, October 29, 1934. In listing his property on his schedules, he set

[1] "Whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act."

forth all 280.31 acres, despite his previous conveyances of 200.31 acres. On December 19, 1934, stating that no agreement of creditors could be had, he amended his petition under Section 75(s), asking to be adjudged a bankrupt.[2] On April 13, 1935, petitioner's son and daughter and their spouses delivered to him a quitclaim deed for all the property, 200.31 acres, he had previously deeded to them and his wife.[3]

On May 27, 1935, respondent obtained a personal judgment against petitioner on the $9,000 note, and a decree of foreclosure of the 200-acre tract, which respondent purchased at the sheriff's sale on July 20, 1935, receiving a certificate of sale. On August 2, 1935, petitioner's one-year period for redeeming from sale the 80.31-acre tract having expired July 12, 1935, respondent surrendered its certificate of sale and received a sheriff's deed to this land.

On October 11, 1935, petitioner amended his petition as authorized by Section 75(s) of the Bankruptcy Act, as amended August 28, 1935, following the invalidation by the decision in *Louisville Bank* v. *Radford*, 295 U. S. 555, of Section 75(s) as originally drafted, and again asked to be adjudged a bankrupt.

On July 20, 1936, the one-year redemption period having expired, respondent received from the sheriff a final deed for the 200-acre tract. On July 29, 1936, respondent filed a motion in the District Court for Northern Indiana, where the proceedings under Section 75(s) were pending, to strike from petitioner's schedules, which had been filed October 29, 1934, these 280.31 acres of land.

On December 14, 1936, the District Court granted this motion, and entered an appropriate order. Apparently the order struck from the schedules eighty acres still owned by Wright in October, 1934, and properly scheduled at that time. Later in December, 1936, petitioner asked leave to amend his schedules to set forth

[2] This fact is stated in respondent's brief. Petitioner's answer to respondent's motion to strike out from the schedules the real estate in controversy alleges "that all the steps under said Section 75 were taken; that later petitioner (Wright) amended his petition under Subsection (s) of Section 75, as amended August 28, 1935." By stipulation the allegations of the answer were admitted as evidence. There is apparently no issue as to the fact of the filing of a petition in bankruptcy on December 19, 1934.

[3] Apparently his wife had died in the meanwhile. The record indicates that she died prior to May 27, 1935.

the reconveyances by his children on April 13, 1935. On December 31, 1936, the District Court denied the application to amend the schedules. Petitioner appealed from both orders of the District Court, striking the land from the schedules and denying leave to amend. The appeals were consolidated in the Circuit Court of Appeals. As stated in the opening paragraph of this opinion, that court affirmed both orders of the District Court. These judgments are under review here.

A further aspect of the controversy between petitioner and respondent may be noted. On September 13, 1935, prior to the debtor's filing of an amended petition under Section 75(s) as amended, respondent instituted an action in the state court for possession of the 80.31 acres. A judgment overruling a defense grounded on the bankruptcy proceedings, and awarding possession and damages to respondent, was affirmed by the Supreme Court of Indiana on April 2, 1937. *Wright* v. *Union Central L. Ins. Co.*, 7 N. E. (2d) 206. A similar judgment with respect to the rest of the land was affirmed October 26, 1937, *Wright* v. *Union Central L. Ins. Co.*, 10 N. E. (2d) 726. By temporary restraining order of the Circuit Court of Appeals, and subsequent stay of mandate, respondent has been restrained from taking possession of the land.

First. (a). By October 30, 1934, when petitioner sought adjustment and extension of debts under Section 75, the 80.31-acre tract had been deeded away to petitioner's son. Accordingly, although this tract was listed on petitioner's schedules, it did not at that time pass into the hands of the bankruptcy court for administration. Nor was the amended petition under Section 75(s), filed on December 19, 1934, any more effective in bringing the tract within the purview of the bankruptcy court. On April 13, 1935, the members of Wright's family relinquished all their right and interest in his lands, including this 80.31-acre tract, so that petitioner then acquired an interest in the land. But Wright's receipt of this gift of land was not effective in and of itself to bring the land within the control of the bankruptcy court. This is the rule applicable to property received by a bankrupt subsequent to the filing of an ordinary petition in bankruptcy,[4] and we

[4] Everett *v.* Judson, 228 U. S. 474, 478; Local Loan Co. *v.* Hunt, 292 U. S. 234, 244; 4 Remington, Bankruptcy, §§ 1377, 1395, 1400; 1 Collier, Bankruptcy, p. 1641.

see no reason why the same rule should not apply to debtor proceedings under Section 75.[5]

There is no substance in any contention that this 80.31-acre tract was brought within the purview of the bankruptcy court by the Act of August 28, 1935, amending Section 75(s), or the filing of an amended petition under this section on October 11, 1935. Prior thereto, judgment of foreclosure had been entered in the state court and a judicial sale (at which respondent bought in the 80.31-acre tract) held on July 12, 1934. Conveyance and delivery of possession to the purchaser was deferred for one year, the period of redemption under the statutes of Indiana. This period expired on July 12, 1935, and the sheriff's deed was executed on August 2, 1935. With the delivery of the deed, prior to any effective extension of the period of redemption, the purchaser's rights, flowing from the judicial sale, were no longer affected by the court's jurisdiction of petitioner and petitioner's estate under the Bankruptcy Act.[6] Nothing in Section 75 as it now stands indicates any intention that the bankruptcy courts assume control over land not previously within the jurisdiction of a bankruptcy court, and already completely divorced from any title of the debtor.

(b). On October 29, 1934, when Wright filed his original petition under Section 75, he was undoubtedly the owner of 80 acres out of the 200-acre tract. He had never conveyed away these 80 acres; no proceedings to foreclose them had been begun. These 80 acres were clearly within the jurisdiction of the bankruptcy court, but we shall not give them separate discussion, for they are controlled *a fortiori* by our ruling with respect to the other 120 acres out of the 200-acre tract.

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[5] In considering this 80.31-acre tract we are not concerned with such property acquired subsequent to the filing under Section 75 as would be controlled by Section 75(n) as amended by the Act of August 28, 1935. "In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

[6] "A sheriff's certificate, however, after the expiration of the year for redemption, invests the holder with an equitable estate in the land, of such high character that it only requires his demand for a deed, to ripen it into an absolute legal title." Hubble v. Berry, 180 Ind. 513, 519.

(c). The status of these 120 acres, deeded in forty-acre parcels, to three members of the family, is governed by other facts. These parcels passed to the other members of the family prior to the filing of the petition for composition on October 29, 1934. Petitioner, however, included them in his schedules. The grantees had title on December 19, 1934, when petitioner filed his first amendment to the petition for composition. On April 13, 1935, these parcels were reconveyed to petitioner; on May 27 judgment for foreclosure was entered and on July 20, 1935, a sale was had. Respondent became the purchaser. The right of redemption expired July 20, 1936. Between the sale and the expiration of the period of redemption, two events occurred. The Congress enacted the Act of August 28, 1935, which added to the Bankruptcy Act, Section 75, a new subsection (s) to take the place of the subsection (s) held invalid in *Louisville Bank* v. *Radford*, 295 U. S. 555. This new subsection (s) was sustained in *Wright* v. *Vinton Branch*, 300 U. S. 440. Secondly, the petitioner, on October 11, 1935, filed a second amendment to his petition for composition and was "duly adjudged a bankrupt." Both of these events are significant in reasoning out the status of the 120 acres.

If the rule of the General Bankruptcy Act is followed, property acquired after the filing of a petition for composition under the provisions of Section 75 would not be subject to bankruptcy administration. Section 75(n) in effect at the time of the filing of the petition leads to the conclusion that, at that time, a similar rule, as to property subsequently acquired, would apply.[7] At the time petitioner filed his first amendment, seeking to be adjudged a bankrupt, subsection (n) continued in the same form. It was changed by the Act of August 28, 1935, to the language shown below.[8] By the terms of the second and third paragraphs of Sec-

[7] "(n) The filing of a petition pleading for relief under this section shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the court, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition or answer was filed."

[8] "(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located,

tion 4 of that Act, all rights of redemption of petitioner which had not expired in land within the jurisdiction of the court of bankruptcy were extended. By the earlier subsection (n) the line of cleavage, between property subject to the bankruptcy jurisdiction and property free from it, came at the date when the "farmer's petition or answer was filed." When this language was adopted there was no provision for a petition in bankruptcy under Section 75. There was provision only for a petition for composition or extension.[9] By Section 4 of the Act of August 28, 1935, subsection (n) was changed to comport with subsection 75(s), permitting a petitioner to amend and ask "to be adjudged a bankrupt." We are of the opinion that it is the date of filing this request for adjudication as bankrupt which fixes "the line of cleavage" as to the property. This conclusion is really in conformity with the reasoning governing the rule in the General Bankruptcy Act.

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for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

[9] Act of March 3, 1933, Section 75(c):

"(c) At any time within five years after this section takes effect, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section."

There the first petition seeks an adjudication in bankruptcy. Under Section 75, it is only the later amendment which does.[10] As the 120 acres had been reconveyed to the petitioner prior to his filing of the petition of October 11, 1935, seeking adjudication as a bankrupt, his interest in the 120 acres was subject to bankruptcy jurisdiction. As the land was reconveyed to the petitioner prior to the decree of foreclosure, petitioner was an owner entitled to redeem after the sale. Ind. Stat. Ann. (Burns, 1933) c. 40. The amendment of October 11, 1935, was the first opportunity to bring the 120 acres into the jurisdiction of the Bankruptcy Court, and we think it had that effect.

Second. The conclusion that all the lands in controversy, except the 80.31-acre tract, are within the jurisdiction of the Bankruptcy Court under the petitioner's amendment asking to be adjudged a bankrupt and are lands, subject to petitioner's right of redemption, as extended by subsection (n) of Section 75, requires the reversal of the judgments below, as to these lands, unless the provisions of Section 75(n), extending the period of redemption, are unconstitutional. Respondent insists that these provisions are a direct invasion of the state's rights under the Tenth Amendment and violative of the respondent's own rights, by virtue of its title acquired by purchase at the judicial sale, in contravention of the Fifth Amendment.

The right of the Congress to legislate on the subject of bankruptcies is granted by the Constitution in general terms. "The Congress shall have power . . . To establish . . . uniform laws on the subject of Bankruptcies throughout the United States," Article I, Section 8, clause 4. To this specific grant, there must be added the powers of the general grant of clause eighteen. "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . ." The subject of bankruptcies is incapable of final definition. The concept changes.

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[10] Section 75 as originally enacted was a part of Chapter VIII of the Bankruptcy Act, approved March 3, 1933, and did not contemplate an adjudication in bankruptcy. Section 73 of that Chapter reads as follows:

"Sec. 73. Additional Jurisdiction.—In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in sections 74, 75, and 77 of this Act."

The Amendments of Bankruptcy Rules, Order of June 1, 1936, 298 U. S. 695, are based upon petitions for composition rather than bankruptcy. See particularly General Order L, p. 701.

It has been recognized that it is not limited to the connotation of the phrase in England or the States, at the time of the formulation of the Constitution.[11] An adjudication in bankruptcy is not essential to the jurisdiction. The subject of bankruptcies is nothing less than "the subject of the relations between an insolvent or non-paying or fraudulent debtor and his creditors, extending to his and their relief."[12] This definition of Judge Blatchford, afterwards a member of this Court, has been cited with approval here.[13]

The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh.[14] By the Act of March 3, 1933, the Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness.[15] This legislation for rehabilitation has been upheld as within the subject of bankruptcies.[16] But respondent urges that under the Bankruptcy Clause Congress is confined to legislation for the adjustment of the debtor-creditor relationship, and insists that the purchaser at an Indiana judicial sale is not a creditor but a grantee with rights acquired by the purchase, separate and distinct from the rights and obligations arising from the creation of the debt. While there may be no relation of debtor and creditor between the bankrupt and the purchaser of his property at judicial sale, we think the purchaser at a judicial sale does enter into the radius of the bankruptcy power over debts. His purchase is in the liquidation of the indebtedness. The debtor has a right of redemption of which the purchaser is advised, and until that right of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor and its power to legislate for the rehabilitation of the debtor. The person whose land has been sold at foreclosure sale and now holds a right of re-

11 Adair *v.* Bank of America Nat. Trust and Savings Ass'n, No. 365, October Term, 1937, decided February 28, 1938, pamphlet page 3; Continental Bank *v.* Rock Island Ry., 294 U. S. 648, 668.

12 In re Reiman, 20 Fed. Cas. 490.

13 Continental Bank *v.* Rock Island Ry., *supra*, 672; United States *v.* Bekins et al., No. 757, 772, this Term, decided April 25, 1938, pamphlet page three; Hanover National Bank *v.* Moyses, 186 U. S. 181, 187.

14 Williams *v.* U. S. Fidelity & G. Co., 236 U. S. 549, 554, 555; Louisville Bank *v.* Radford, 295 U. S. 555, 582.

15 Adair *v.* Bank of America Nat. Trust and Savings Ass'n, *supra*, pamphlet pages three and four, notes 2 and 3.

16 Wright *v.* Vinton Branch, 300 U. S. 440, 456.

demption is, for all practical purposes, in the same debt situation as an ordinary mortgagor in default: both are faced with the same ultimate prospect, either of paying a certain sum of money, or of being completely divested of their land. We think the provision for the extension of the period of redemption comes clearly within the power of the Congress under the bankruptcy clause. But respondent presses a further argument that the Fifth and Tenth Amendments are violated.

(a) The Fifth Amendment is said to be violated and the property of respondent, the purchaser at the judicial sale, taken without due process,[17] by the provision for extension of the time of redemption. Section 75(n) provides that "the period of redemption shall be extended . . . . for the period necessary for the purpose of carrying out the provisions of this section." The stay may be approved for the period during which the debtor seeks to effect a composition,[18] and, as contemplated by Section 75(s), for a moratorium period not exceeding three years, during which the court's equitable supervision over the land continues, and a reasonable rental is required.[19] That such an extension is consonant with the due process clause of the Fifth Amendment is indicated by our decision in *Home Bldg. & Loan Assn.* v. *Blaisdell*, 290 U. S. 398, where we held that neither the due process clause of the Fourteenth Amendment nor the contracts clause were violated by an emergency state statute authorizing extension of the period of redemption from foreclosure sales, for a just and equitable period not exceeding two years, conditioned on payment by the mortgagor of a reasonable rental, as directed by the court.

The mortgage contract was made subject to constitutional power in the Congress to legislate on the subject of bankruptcies. Impliedly, this was written into the contract between petitioner and respondent. "Not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order."[20] And the fact that in this case

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[17] Compare Louisville Bank *v.* Radford, 295 U. S. 555, 601.

[18] Cf. Adair *v.* Bank of America Nat. T. & Sav. Assn., No. 365, October Term 1937, decided February 28, 1938.

[19] See Wright *v.* Vinton Branch, 300 U. S. 440, 460 *et seq.*

[20] Home Bldg. & Loan Assn. *v.* Blaisdell, *supra*, at page 435.

the purchaser at the foreclosure sale was also the mortgagee is not a determining factor. Any purchaser at a judicial sale must purchase subject to the possibility of the exercise of the bankruptcy power in a manner consonant with the Fifth Amendment.

We have held that Section 75(s) does not unconstitutionally affect the rights of the mortgagee.[21] We do not think the provision for extension of the period of redemption in Section 75(n) is invalid. The rights of the purchaser are preserved, the possibility of enjoyment is merely delayed. The rights of a purchaser, who under the state law is entitled to the redemption money or possession within a year, are not substantially different from those of a mortgagee entitled, on the maturity of the obligation, to payment or sale of the property.

(b) In view of our decision that the law is within the bankruptcy power, scant reliance can be placed on the Tenth Amendment. Respondent argues that to subject property bought in at a foreclosure sale to the extended redemption period and other provisions of Section 75(s) "would be a direct invasion of the powers reserved to the State by the Constitution, and a violation of [respondent's] property rights theretofore determined by the courts of the State of Indiana in accordance with the law of that State."

If the argument is that Congress has no power to alter property rights, because the regulation of rights in property is a matter reserved to the States, it is futile. Bankruptcy proceedings constantly modify and affect the property rights established by state law. A familiar instance is the invalidation of transfers working a preference, though valid under state law when made. Recent decisions illustrate other instances:

"A court of bankruptcy may affect the interests of lien holders in many ways. To carry out the purposes of the Bankruptcy Act, it may direct that all liens upon property forming a part of the bankrupt's estate be marshalled; or that the property be sold free of encumbrances and the rights of all lien holders be transferred to the proceeds of the sale. Van Huffel *v.* Harkelrode, 284 U. S. 225, 227. Despite the peremptory terms of a pledge, it may enjoin sale of the collateral, if it finds that the sale would hinder or delay preparation or consummation of a plan of reorganization. Continental Illinois Nat. Bank & Trust Co. *v.* Chicago, R. I. & P. Ry.

[21] Wright *v.* Vinton Branch, *supra*.

Co., 294 U. S. 648, 680-681. It may enjoin like action by a mortgagee which would defeat the purpose of [Section 75] subsection (s) to effect rehabilitation of the farmer mortgagor." *Wright* v. *Vinton Branch*, 300 U. S. at 470.[22]

Such action does not indicate a disregard of the property rights created by state law. The state law still establishes the norm to which Congress must substantially adhere; a serious departure from this norm, i. e., from the quality of the property rights created by the state courts, has led to condemnation of the federal action as constituting a deprivation of property without due process.[23]

Property rights do not gain any absolute inviolability in the bankruptcy court because created and protected by state law. Most property rights are so created and protected. But if Congress is acting within its bankruptcy power, it may authorize the bankruptcy court to affect these property rights, provided the limitations of the due process clause are observed.

In so far as the judgments below struck from the schedules the 80.31-acre tract and refused to permit amendment to show the character of appellant's interest, they are affirmed. As to the rest of the land in question, they are reversed.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[22] See also Adair v. Bank of America Ass'n, *supra*, restricting the enforcement of a mortgage upon the gross proceeds of a crop.

[23] Louisville Bank v. Radford, 295 U. S. 555.